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EDWARD COKE

Oracle of the Law



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EDWARD COKE

Oracle of the Law

Containing the *Story* of his *Long Rivalry* with FRANCIS BACON: Some *Account* of their *Times* and *Contemporaries*: Famous *Trials* in which COKE Participated: His *Stand* against KING JAMES I to *Maintain* the *Supremacy* of the *Common Law*: His *Share* in *Wresting* the *Petition* of *Right* from KING CHARLES I: To which is added *A Statement* about the *Law Writings* of COKE on which *Generations* of *Lawyers* were *Trained*

BY

HASTINGS LYON AND HERMAN BLOCK

OF THE NEW YORK BAR

With Illustrations



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EDWARD COKE

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BOOK I

THE BOY

There is no jewel in the world comparable to learning; no learning so excellent both for prince and subject as knowledge of laws; and no knowledge of any laws (I speak of human) so necessary for all estates and for all causes concerning goods, lands, or life, as the common laws of England.

EDWARD COKE

EDWARD COKE

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BOOK I

THE BOY

I

THE fall of the headsman's axe punctuated the politics of those days. In England, the deposed Lord Protector Somerset bent his neck to the block on January 22, 1552. Edward VI had attained the fifteenth year of his age and the fifth of his nominal reign. The fates spun the tenuous thread of his life a scant year and a half longer before it broke, and the last male child of the Tudors died. Then, become Northumberland, the new Warwick, less robustly than the king-maker of that title, sought to make a queen so that he might continue the power behind a throne. The axe of the executioner flashed twice more: once over the head of Northumberland, and once above the fair shoulders of the gentle Lady Jane Grey.

Turn from this glimpse of the practice of politics to far quieter scenes. At that time on the Manor of Burghwood, in Mileham and Tittleshal, Norfolk, Robert Coke, Esquire, lived with his wife Winifred. He was a barrister of Lincoln's Inn, and of such distinction in his calling that he attained the rank of Bencher in that honorable society. Still further identifying the family at Burghwood with the legal profession, Winifred, the wife of Robert Coke, was the daughter of William Knightley, an attorney of Norwich.

Here at this manor in Mileham and Tittleshal, on the first of February in the year 1552, a few days after the dramatic political event which has been mentioned, Winifred bore to her husband a son, who was baptized Edward, the name of the fifteen-year-old king. This Edward Coke will be the subject of these pages.

Tradition has it that the mother's travail came upon her

with unexpected quickness, so that she gave birth to her son by the fireside before she could be removed to bed; and that, grown to manhood, Edward, in the spacious freedom of Elizabethan speech, jestingly boasted of his speedy arrival as an example of his enterprise thus early shown. At the time of this event, Edward's parents had been married for nine years, and the father was of the age of thirty-nine.

Edward was the only son of this pair, but far from an only child, for they had seven daughters. At what point in this series he came is not known. Though one of his biographers, giving no authority, says he was the first child, this statement seems improbable. It may have been an inference from the fact that his name appears first among the list of children on the monument to Robert Coke, which sets forth Edward Coke, a son, then names the daughters. Since the father and mother had been married nearly a decade, it is a reasonable surmise that Edward had some sisters when he came into the world. Presumably, whatever his relative age, the monument names the seven girls by seniority. They were Winifred, Dorothy, Elizabeth, Ursula, Anna, Margaret, Ethelreda — bevy of English girlhood.

At the time of the birth of Edward, the father did not own the manor of the family abode, but occupied the premises under some form of lease. Then, having a male heir to succeed him, he signalized the event by acquiring title, through purchase, by deed dated the 6th of April following the February 1st birthday of Edward.

To date the time still further, let the reader remember that it was the birth year, 1552, of Edward Coke when in Europe Henry II of France, pursuant to a bargain with the league of Protestant Princes under the leadership of the young Elector Maurice, took possession of the familiar battle-line towns of Metz, Toul, and Verdun; when Maurice caught the wary, seasoned, but ill, Emperor Charles V off guard and able to escape only by flight on a litter through the Brenner Pass; when, in November, the dogged Charles rallied to a fierce besieging of Metz with forty-five thousand men, and the Duke of Guise, within, laid the foundation of his military reputation by its skillful defense, till, after two months, Charles withdrew with his well-remembered bitter jest, 'I see plainly



Photograph by H. Applegate

THE PARISH CHURCH AT TITTESHAL, NORFOLK

that Fortune is a woman; she favors a young king more than an old emperor.' This is not, however, the place for a history of Europe, but for the life of an intensely insular Englishman.

II

WHEN the child Edward Coke first became aware of his environment, he looked on an England of not more than five millions of inhabitants. For the most part these people lived on the land and under the conditions that the boy Coke saw about him. In the autumn, he saw them sowing their wheat and rye for bread; in the spring, their barley for beer, and their oats, beans, and peas for their horses, cattle, swine, sheep, and poultry. He saw them planting the two fields and leaving the third fallow in the manner of the agriculture of that day. He saw them at the harvesting and in all the seasonal succession of farm work, caring for their cattle, and tending their sheep.

Something of the significance of the ranging flocks brooded over the land, however dim the meaning of them to the child. Though the pastoral scene presented the serene beauty that it always shows, yet the human beings who inhabited the countryside found life subject, as it usually is, to the stresses of change. Only two and a half years before Edward's birth, over three thousand men had suffered violent deaths close to the not far distant Norwich in Ket's Rebellion arising out of these stresses.

A cycle of economic adjustment was in progress. Ravages of the black death in times past had reduced the numbers of those whose toil tilled the land. There was a market for English fleeces, the best wool in the world. The landowner turned over to the sheep, enclosed for pasture, so much of his demesne land as he could no longer find the labor to till, and so much of his tenant land as he could no longer find tenants to farm. These forces were not to find an equilibrium before fresh forces came in to keep economic life from coming to a balance. The currency depreciated, slightly as yet through the added supply of precious metals from the New World, but enormously through the debasement of the coin begun under Henry VIII and accelerated during the protectorate of Edward VI. Politicians had not yet discovered paper currency and fiat money; they

could, however, do very well with lightening the weight of coin and increasing the alloy to as high as seventy-five per cent. The world's enlarging demand for English wool, its mounting price, especially in English money, its marketability, urged the landowner to increase its production.

By this time the old labor tenures had been commuted to money rents. Customary rentals had declined in purchasing power, and the landowner had two ways of offsetting the decline — to increase his production of wool, and to raise the rents. He resorted in part to one and in part to the other remedy. So far as turning his demesne land into pasturage was concerned, he had simply to cease employing labor to cultivate. So far as his tenant land was concerned, he had the right to re-take possession of some of it. As for copyhold land, he could make the fine or money payment, that was his due for admitting the heir, prohibitively high; if he were impatient and not too scrupulous, he could take advantage of those pressures which are ever available to induce an undesired tenant to remove himself; if he were too impetuous to await the result of such pressures, or if the obstinacy of a tenant exhausted his patience, he might as a last resort forcibly evict without right. Whatever the means, the result of a man without land to till was the same.

Though it is estimated that not more than a fifth of the tenant land in England was affected by the whole movement extending over the generations of two centuries, this, and a corresponding conversion of the demesne land of the landowners, were sufficient to cause great distress in an economic organization of society that had little elasticity. Exportation of wool was an exportation of the fleece. The first expansion of woollen manufacture under the impulse of encouraged immigration of skilled Lowlanders under Edward III had run its course, and for export, England could not compete with the superior skill in the Lowland cloth towns; markets for English cloth had been lost through inferior products resulting both from the relative unskillfulness and from willful deterioration; the second expansion under the impulse of skilled refugee workers in the time of Elizabeth was yet to come. Landless men could find little to do; if a rapid shift of employment had been otherwise possible, the apprentice system of seven years'

initiation into a craft would have prevented it. Along with those whom land conditions directly affected many artisans felt the discontent of unadjusted prices in the debased currency inflation.

Ket's Rebellion brought fighting fairly close to the household at Burghwood, always in touch with the ducal and diocesan city of Norwich, and it must have been a matter of conversation in the Norfolk country through Edward Coke's childhood. Other outbreaks of violence of the times were mainly religious, conflicts of the old Catholics and the new Protestants; this seems to have been entirely economic. Though the tide of enclosures apparently reached its flood at this period, it continued a matter of importance through nearly the whole of Coke's lifetime, of occasional legislative action and of frequent lawsuits.

Adding somewhat to the strain of the land rental situation, prosperous merchants increasingly sought to become landlords. Ownership of land was the one form of investment to which profits at that time could be withdrawn from the hazards of mercantile enterprise. The merchant sought a psychic as well as an economic income, for by the ownership of land he put himself on the way of socially rising to the ranks of the landed gentlemen. Besides the influence his demand exerted on land values, accustomed as he was to bargaining and the economic viewpoint of profits, and unhampered by the traditions of the countryside, which exercised a restraining influence on all but the most ruthless of the hereditary landowners, he proved a brisk raiser of rents. In fact, all around, in spite of bewildered legislative efforts, the sixteenth century became less customary and more competitive. This process was the economic side of that expression of individualism which the period of the Renaissance engendered.

Such was one aspect of the environment the child Edward Coke looked upon, uncomprehendingly, to be sure, but, nevertheless, through which he grew to experience and understanding. He watched his landowning barrister father depart down the road on horseback to keep his terms of Court at London. His mother could seldom have accompanied her husband. Besides the monastic character of chambers at the Inns of Court, the exigencies of bringing to birth and rearing

seven daughters and a son were of a home-keeping kind. The boy Edward saw other riders pass along the road, sometimes a carter, more often pack-horses, and a succession of men traveling on the shanks' mares of the poorer classes, occasionally among them a soldier from the wars. Along the road the pack peddler came with his bundle to feast the eyes of childhood, and to sell, if not to the mistress, then to the maid and the cottage housewife. Cattle, sheep, flocks of geese, all on their way to market, came along in the picturesque procession of the roadways.

Edward Coke lived his early childhood in troubled times. In his second year, Edward the King died, July 6, 1553. Northumberland failed in his endeavor at queen-making, and suffered the penalty, August 22, 1553. Mary Tudor, daughter of Henry VIII and Catherine of Aragon, came to the throne. Just as Coke attained his third year, the English repugnance to the Spanish marriage arranged for Mary with Philip, son of the Emperor Charles V, broke out in Wyatt's Rebellion. In London, the barrister confrères of Edward's father, and mayhap he among them, at Westminster Hall, pleaded their cases with their harness of armor on, and the judges hearing them wore harness under their robes, ready for what might befall.

But Mary was married to Philip by proxy, March 6, 1554, and the tardy husband later came in person with the Spanish gentlemen of his suite, who enjoyed the strange English custom of salutation in kissing Mary's maids of honor. Unrecanting Protestants burned at the stake. Differences in religion added their difficulties to the economic stresses.

At the date of Coke's birth, hardly more than two decades had passed since Henry VIII had broken with Rome. Though some of the fibers in the soil of the old religious allegiance had already been torn, a political fiat could not in a moment uproot the faith of a whole nation. Besides the minority of zealous Roman Catholics who refused to profess an abandonment of their spiritual loyalty, a much greater number of Englishmen conformed to the new State Church only as a matter of policy, and would have been glad to see the old ecclesiastical order return, as it almost did under Mary. The avowed and the secret Catholics continued a serious menace

to the new Establishment until after Coke reached his middle age, when an event happened, the effect of which was at least greatly to diminish this danger. And within the Establishment, from the start, divergencies of belief created irritation and difficulty.

Shortly before the fifth anniversary of Edward Coke's birth, the French took Calais, England's last foothold on the Continent. Towards the end of his sixth year the reign of Philip and Mary ended with the death of Mary, November 17, 1558, and the boy Coke became an Elizabethan when the new Queen, at the age of twenty-five, began her sovereignty which was to continue for forty-five years. Note only one more political event before returning to affairs more directly touching the life of Edward Coke at this time: in France, Henry II died, July 11, 1559, from the wound accidentally inflicted in a tournament, and Francis II with Mary Stuart became the French King and Queen.

While these events were taking place in the world of political affairs, Edward was growing into boyhood in the quiet country scenes of his father's Norfolk manor. He was eating his six o'clock breakfast of bread and meat, or on Friday and Saturdays, fish-days, salt fish or eggs; hungry again for his ten o'clock dinner, eleven o'clock on fish days, of the same fare with the addition of childhood's beloved sweets, the enjoyment of which marked him of a class apart from the yeoman boys on the farms about, a variation of raisin-filled plum puddings, of fritters, custards, tarts, blancmanges, jellies, and cream of almonds. On flesh days he had his 'drinking' at three, omitted on fish days, about six his supper, and so to bed. He learned to hold his meat neatly on his pewter plate with his left hand while he cut it with the knife, soon to be regularly carried in his own girdle, and acquired all the other proper niceties of deportment of a gentleman's son.

The life of a lone boy among a bevy of sisters suffers some lacks. However, when he reached the age when masculinity must assert itself, doubtless he found boy companions, sons of yeoman tenants on his father's farm, if boys of parentage of a rank equal to his father's did not live near enough to be frequently available as playmates, with whom to play at whipping tops, hide-and-seek, more sacks to the mill, pushpin, nine

men's morris, and other games immemorial in the tradition of childhood. The shortcomings of an over-feminine household and of the country isolation for gregarious boyhood were not to hamper him long. Some way, by tutelage of a busy mother, aid of an older sister, instruction of a governess, or, in this well-to-do household, perchance a tutor, he learned to read and write, and in 1560, at the age of eight, was taken to the Cathedral City, to attend the Norwich Free Grammar School.

This early separation of the boy from home, often injurious to the physically delicate and mentally sensitive, was presumably helpful rather than harmful to Edward Coke. He was a vigorous lad. In later life he boasted that he had never taken physic, and never been ill, a sufficient commentary on toughness under such a diet as that of the Elizabethans. He never showed himself lacking in at least sufficient self-assertiveness. He grew up heir and only son of a barrister familiar with the London world and one of the landed gentlemen of the Norfolk country. It is likely that this early thrusting among a group of boys, to whom such distinctions are not of the greatest consequence, was good for young Coke. It will be noted that he was not sent to Eton. His father was cautious in furthering whatever ambitions he had for his only son. In distinction from such public schools as Eton, the sixteenth-century grammar schools seem mostly, if not entirely, to have been places of day attendance only. Edward very likely lived in Norwich with some of his mother's family, the Knightleys.

III

So Edward changed the country for the city scene — a city not vast, to be sure, but, outside of London, one of the largest in England. It was still somewhat in the doldrums from the decline of the English woolen manufacture, of which it was one of the most important centers. A century and a third later, by actual enumeration the population was between twenty-eight and twenty-nine thousand. Since this was after the revival and long growth of the woolen industry, one may surmise that at the time Edward added his youthful unit to its number, the population did not reach to twenty thousand. It was a walled town, and its walls proved strong enough to

withstand the artillery fire of the time in Ket's Rebellion just a decade earlier. There stood the old Norman castle with its battlements; there was the great palace of the Dukes of Norfolk, seat of the Howard family, with its grounds stretching to the river Wamsum; there the Cathedral remained to the Church after the property of the religious orders in the city had, some twenty-five or six years earlier, in the dissolution of the monasteries under Henry VIII, gone the way to the unloosing grip of lay advantage.

Of the Cathedral, Queen Elizabeth was to complain to the Bishop of Norwich ten years later that certain of the prebendaries had changed the administration of the sacrament, presumably from the altar to the central table, in the usual way of such innovation, had pauperized the ceremonial, broken down the organ, and, so far as lay in them, had turned the choir into a Genevan conventicle. As elsewhere probably all this change followed the rampant Protestantism Somerset had cultivated, which took root and flourished among the artisans and tradesmen of a manufacturing and mercantile town, and represents the scene within the Cathedral substantially as it appeared to the eyes of young Edward.

The picture of the city, even though still in the process of slow emergence from the filth and stench of medieval congestion, was fair to the view. In the language of Fuller in his 'Worthies of England,' describing the town as it then appeared, 'Norwich is (as you please) either a city in an orchard, or an orchard in a city, so equally are houses and trees blended in it, so that the pleasure of the country and the populousness of the city meet there together. Yet, in this mixture the inhabitants participate nothing of the rusticalness of the one, but altogether of the urbanity of the other.'

Such a reference to the social quality of the city by the excellent Master of the Savoy Chapel carries the probability of more than a polite compliment. Norwich was essentially a provincial capital. Dukes of Norfolk held court there on a scale that was hardly less than regal. Bishops of Norwich and the personnel of the Cathedral gave a strong ecclesiastical flavor to the city. Yet it was an important manufacturing and commercial town and had its wealthy commercial families. The description of Norwich is lingered upon because, as will

appear, it was a place of some importance in the life of Edward Coke long after his school days.

Here he attended the Norwich Free Grammar School for seven years. This school arose in a sense out of the dissolution of the monasteries under Henry VIII already mentioned. The possibilities of that momentous event, which gave English Protestantism its firm economic stake, were in the air of the year 1539, and for years subsequent. Augustine Steward, a wealthy merchant of Norwich, sounded out the Duke of Norfolk to be sure he was not treading on the toes of the too-powerful in the matter he had in mind; and since the Duke, besides being powerful, was also popular, the citizens had no desire to do anything contrary to his wishes. He was helpful on occasion, and could be and proved to be helpful on the application of Steward to the King for the house of the Black Friars in Norwich. Of course, Steward was not important enough to get anything out of the spoiling on his own account; he made his application for sweet charity's sake, so that, if there was to be a robbing of Saint Peter in this item, the booty should go to an educative and civic Saint Paul.

He represented to the King that the house standing in the midst of the city, 'to the fayre sight apparaunce and suretye of the same;... the citizens,... considering as well the very utter decaye of the sale of worsteds... being unable to support or mayntayne the charges of the city, onless they may be... holpen in that behalf,' these buildings would be suitable 'to find a perpetual free scole therein, for the good erudicion and education of yought in lernyng and vertue'; that the church would make 'a fayer and large halle for the mayor and his bretherene, with all the citizens to repair unto for their common assemblyes'; that the choir would serve for a chapel for the citizens on assembly days; and that the dormitories and other apartments of the monastery would be useful as granaries to hold the stock of corn kept in the city against a time of scarcity.

Sweet charity had her way. The application succeeded, and the King in 1540 conveyed the Black Friars monastery to the city in consideration of 81*l.* paid by our beloved Augustine Steward of our city of Norwich, merchant. Though the grant reserved a rent, Edward VI relinquished it in the third year

of his reign; which is to say that the popularity-loving Lord Protector Somerset relinquished it on behalf of the royal boy. Some literal despoiling followed the grant. The paneling from the Dominican Church choir went to adorn a house in Saint Andrew's Parish; timber of the monastery made useful stalls in the market-place, and the large rood turned to ashes warming the melting-pot of a plumber.

Civic virtue got far the larger part of the monastery and its appendages, but the 'free scole for the good erudicion and education of yought' found housing in the choir, and there Edward Coke went to school.

Mr. Walter Hawe was Master at that time, but one knows no more of him than of Melchizedek, who 'praised the Lord and gave some wine to Abraham,' or than of Ucalegon, who 'lost his house when Agamemnon came to Troy.' Presumably after the manner of olden schoolmasters, he spoiled not the child but duly whipped Master Edward Coke and his other charges in the way of 'erudicion and education of yought.' It was a Spartan way. The ordinances of one of these old Grammar Schools provided that 'the schollars shall resort to the School at six in the morning and continue there until eleven, and at one in the afternoon and continue until five.'

As for the 'erudicion' Master Coke got at the Norwich Free Grammar School at the hands of Master Hawe, one knows, from the curricula common to Grammar Schools of the time, that it was Latin and more Latin. After drilling on the accidence, the Master led or drove the boys through the *Sententiae pueriles*, or some other Latin conversation book of the time. William Lily, the first High Master of Saint Paul's School, had prepared the elementary Latin grammar then standard. A path to the classical literature was likely to be laid through Renaissance writing in the language. One Baptista Mantuanus had written in a post-classical Latin some popular eclogues in the manner of the pastorals of Virgil. The idiom came closer than the classical to that of the vulgar language.

It should be remembered that Latin was then in active use as an elegance of manners, for working purposes as an international tongue, for the writing of scholars, in all things in which men consciously sought to show an elevation above the

common. In the law, the procedure was still in Latin. The ingenious torsions of classical use, and the absolute inventions, to make the Augustan tongue serve the purposes of naming things and expressing ideas Augustus never dreamed of, amuse and irritate. But they served their day.

From the post-classical writing the boys came to such works as Cicero, Virgil, Seneca, Ovid, Terence, Plautus, and Horace. Pupils who were going up to the Universities and others of special promise also studied the rudiments of Greek. So Coke pursued learning in the Norwich Free Grammar School. He did not show the precocity of many others of his time. Francis Bacon went up to the University at the age of twelve, and he was not unique.

Young Coke had not been long at school when the death of his father happened, November 15, 1561. The busy barrister, stricken at his task, died in his London Chambers at Lincoln's Inn when he was forty-eight, and before Edward was ten years old.

IV

SOME ten months before the death of the barrister of Lincoln's Inn, a boy had been born, January 22, 1561, in one of the great London houses on the Strand. Since this new Elizabethan, baptized Francis, grew up to take a considerable part in the life of Edward Coke, one must dwell a little on the event of his birth. The father of Francis, Sir Nicholas Bacon, member of Her Majesty's Privy Council, held the high office of Lord Keeper of the Great Seal. Son of the sheepreeve to the abbey of Bury Saint Edmund's, the Lord Keeper had risen to his important position through his sturdy ability and an early friendship with his fellow Privy Councillor, Sir William Cecil, at that time, Mr. Secretary, yet to be Lord Burghley and Lord Treasurer.

Nicholas Bacon had gone to Corpus Christi College, Cambridge, where, through the aid of a Bible clerkship, he remained to take his bachelor's degree. There he had met Cecil and also formed another friendship with a rising man, Matthew Parker, who at the date of the birth of Francis had already been for a year Archbishop of Canterbury. Called to the Bar by way of Gray's Inn, the elder Bacon became a sound



SIR NICHOLAS BACON
National Portrait Gallery, London

and able lawyer, a Bencher of Gray's, as Coke's father had been a Bencher of Lincoln's. Appointed on a commission for the dissolution of one of the Church foundations, Nicholas had advocated that the revenues of the dissolved monasteries be applied to educational purposes. That proposal, one hardly needs remark, was not in the least in accord with the prevailing idea. Not stretching advocacy of his theory to a breaking point, he himself became a substantial beneficiary of the spoils, and obtained lands in Hertfordshire, Norfolk, Wilts, and Hampshire. The father of his friend William Cecil had also come into substantial landed property from the same source. One may parenthesize that perhaps Elizabeth rationalized her money-clinging failure to reward Cecil and others of her statesmen more liberally in the reflection that her father had done very well for some of them or their ancestors.

Nicholas entered Parliament. He became attorney for the Court of Wards and Liveries, and, like Cecil, succeeded in holding office through the strongly Protestant reign of Edward VI and the strongly Catholic reign of Mary. When Elizabeth came to the throne, he became her first Lord Keeper. After little more than a year, letters patent, later confirmed by statute, were issued authorizing the Lord Keeper to hear causes in Chancery, and exercise the full jurisdiction of Lord Chancellor. Nicholas Bacon was the first distinguished lawyer holder of the office since the day of Sir Thomas More.

Bulky bodied, face square, massive and lined, with a keen yet upright and noble expression, he was about fifty-two when his son Francis was born. With all his ruggedness, he enjoyed wit, but had a kindly disposition, which he hit off in his saying of himself that 'he loved his jest well, but not the loss of his friend.' Sturdily supporting Cecil because they had the same general viewpoint, he could and did on occasion as sturdily differ.

Nicholas Bacon and Sir William Cecil had become brothers-in-law, each by a second marriage, Bacon marrying Anne and Cecil marrying Mildred, daughters of Sir Anthony Cooke, who had been tutor to Edward VI. So Sir William was uncle to Francis, of which more later. Nicholas Bacon already had three sons and three daughters by his first wife, and his second wife, the Lady Anne, had given birth to Anthony two years before the birth of Francis.

The mother of Anthony and Francis was one of the somewhat learned women of the time. When twenty-two years of age, she had published the sermons of Bernardine Ochine, which she had translated from the Italian. She quoted Latin authors in her letters. In the contemporary theological differences she leaned strongly towards the Calvinistic side, as was natural enough for a woman whose girlhood had come through the atmosphere of the Court of Edward VI; and her husband, as well as his friend Cecil, looked kindly in the same direction. Opposed to extravagance and trifling of any kind, she lived long to show affectionate solicitude for her two sons, and to give them considerable advice, often excellent, if not always appreciated.

So, while Nicholas Bacon, the father, was busy in the Council, busy in Chancery, busy building his house at Gorhambury, begun when Francis was two and completed when he was seven, at a cost the owner knew to the accuracy of 1894*l.*, 11*s.*, 9½*d.*, besides stone and timber, Francis grew up at Gorhambury and in London at the mansion of York House, where he had been born, familiar with the Court. Elizabeth came to call him the Little Lord Keeper, and he aptly caught the Court manner, so that when the Queen asked him how old he was, he could answer 'but two years younger than Her Majesty's happy reign.' It was a different environment from that of the boy Coke.

V

To keep in touch with the times Edward Coke was growing up in, one may remark that Francis II of France, husband of Mary, Queen of Scots, and first of the series of three sons of Henry II and Catherine de Medici to occupy the throne, died after his brief reign on December 5, 1560, and the second of the series became King of France as Charles IX under the regency of his mother. In England, Elizabeth had her many-suited rôle thrust upon her, so that it might have been said of her, as her subject yet to be born said of Portia, that — all by ambassadorial proxy in the case of the Queen —

'Nor is the wide world ignorant of her worth,
For the four winds blow in from every coast
Renowned suitors; and her sunny locks

Hang on her temples like a golden fleece,
Which makes her seat of Belmont Colchos' strand,
And many Jasons come in quest of her.'

The golden fleece, to be sure, was something more than her horizon-sunny locks and her person, praised of her contemporaries. Only Lord Robert Dudley, however, 'Sweet Robin,' was in the least dear. On September 8, 1560, his wife Amy Dudley was found dead at the foot of a staircase. There had been foul play, but whose was never determined. In August of 1561, the first-time widowed Mary Stuart, Queen of Scots — and by her own titular addition, of England, also — landed in her actual kingdom. After the beginning of the Catholic crusade in France under Guise and the massacre of Vassy, the Huguenots appealed to Elizabeth, and the necessity of a strong policy for the sake of her credit with the money-lenders, and other events, forced her to an alliance with Condé, under the terms of which the English occupied Havre to secure the return of Calais, when Calais should be won so as to be returnable. The plague forced the surrender of Havre July 29, 1563.

One great act of statesmanship stands out of the times. In 1560, the English Government called in the debased coinage, uttered a completely new and sound currency, and carried the matter through with such skill as to win the admiration of later times. This ended one great cause of economic distress and laid a solid foundation for the rising prosperity.

In Spain, through the renowned abdication of the throne in 1557 by Charles V for the sake of the peaceful life at Youste in Estremadura, his son and pupil came to rule the vasty Spanish possessions as Philip II. Widower of Queen Mary, after retiring from a none too ardent attitude among the suitors of Elizabeth of England, his deceased wife's half-sister, he had married Elizabeth of France, and by this marriage had evoked the coy remark of the English Queen that her name was a fortunate one. In the Netherlands, his representative, the Duchess of Parma, endeavored, through the curriculum of the rack, the gallows, and the stake, to teach the Catholic faith to Lutherans, who learned only Calvinism in the process, and migrated by thousands, some to French Huguenot districts, more to England, bringing their arts and industries with them.

Some four years after the death of his father, the schoolboy

Coke, when thirteen years of age, saw a local episode of this migration of which the stream into England was to transform one aspect of the economic life of the land. The depression of the city of Norwich, arising out of the decay of the worsted industry, continued. In 1565, John Southerton, the Sheriff, and his relative, Thomas Southerton, the Mayor, consulted the Duke of Norfolk on the state of affairs. The conference came to an agreement to invite to Norwich strangers from the Low Countries who had come to England to escape persecution.

The invitation went out and brought to the city thirty master workmen, each of whom had ten servants to assist him, all skilled in the production of those fabrics which Norwich had to be able to supply in order to regain its prestige and recapture its markets. The craftsmen fellow citizens of the Sheriff and the Mayor did not extend their private hospitalities to the Strangers, but, naturally enough, looked upon them with a jaundiced and hostile eye as imps from a mythological nether-land. However, the Duke held his ægis over them, and the corporation of the municipality placed at their disposal for worship the Church of Sainte Mary-the-Less. After the near presence of the thumbscrew and the rack, this treatment seemed well enough. They manifested their freedom-loving nature by insisting on a right to deal in their product with whom they would, not necessarily through the local middle men, and they had their way. Many more of their kind came. In less than a decade it was estimated that four thousand of these Strangers were in the town. Again quoting Fuller on Norwich in his 'Worthies of England,' 'the Dutch brought hither with them not only their profitable craft but pleasurable curiosities. They were the first who advanced the use and reputation of flowers in this city.'

In that same year, when Edward was thirteen and saw the coming of the Strangers to Norwich, Mary, Queen of Scots, took Darnley for husband, and, June 19, 1566, gave birth to James Stuart. Before the birth of James, the hectic Scotch melodrama had begun — Darnley holds Mary while his fellows wrench Rizzio from her presence, Douglas drawing Darnley's dagger to plunge into Rizzio's side at the stairhead — Mary, Delilah-voiced by the sulky, emotion-worn Darn-

ley's bedside — Darnley blown to a corpse at Kirk-a-Field, while Bothwell watches in the garden — The trumped-up trial, acquittal, and divorce of Bothwell — Mary leaves James with the Earl of Mar and Bothwell abducts her by consent — She marries him — They encounter the Lords at Carberry Hill — Bothwell flees, the Queen taken prisoner to Lochleven — Elizabeth's message, 'At all times she might count upon a sure friend in the Queen of England' — In danger of trial and death Mary abdicates — Her two-year-old child crowned James VI of Scotland — And in the October following that coronation of July 28, 1567, Coke, the Norwich Free Grammar School boy in whose life that James was to take a part of some importance, rode down to Cambridge.

Not long after the death of her husband in 1561, Coke's mother had married again, one Robert Bosanne, and by him had a son, John. Of Coke's seven sisters, little is known but what one can gather from the duly Latinized tombstone to the father — that they all grew up and were married: Winifred to Milo Mingay, gentleman; Dorothy, to William Franklyn, gentleman; Elizabeth, to Richard Osborne, gentleman; Ursula, to George Ledys, gentleman; Anne, to Francis Stubbe, gentleman; Margaret, to Robert Barker, Esquire; Ethelreda, to Nicholas Bohun, Esquire. Probably Coke had holiday visits to make to the homes of brothers-in-law, and baby nephews and nieces to admire.

VI

COKE arrived at Cambridge, an applicant for admission to Trinity College, then one of the latest of the foundations at the University. It had been established by Henry VIII, who merged Michaelhouse and King's Hall in his new endowment of the last year of his reign, 1546. The eighth Henry had reason to be grateful for the desired answer the University had given to a hypothetical question he had propounded to the learned doctors as experts in the Canon Law governing the state of facts presented, viz: 'May a man lawfully marry his brother's wife when his brother died without issue?'

With the other candidates Coke, as required, duly presented himself to Trinity at Michaelmas to exhibit the extent of his knowledge in Greek, Latin, and other subjects. The Greek

demand of him should not have been onerous, for the College was soon to elect as Master Whitgift, who knew none, though he had been Lady Margaret Professor of Divinity, the chair Erasmus had filled. Whatever the necessary qualifications, Coke fulfilled them and was admitted. As heir to the Manor of Burghwood, he would be no sizar, likely not an endowed scholar, but rather a pensioner or student paying for his instruction. He found himself in a college community which, according to the Trinity statutes of the time, consisted of the Master, sixty fellows, sixty-nine scholars, sixty-four pensioners, sixteen sizars, or students receiving aid in addition to instruction, and rendering service therefor, six lay clerks, and ten boy choristers.

The new Cantabrigian wrote no intimate memoirs to tell just how he occupied his four years at the University, what studies he pursued, what tutors he had, what amusements he sought, what companions he knew, what reaction to his environment he felt. These pages can present only some glimpses of the place as it was while he was there. In this community the subjects he studied conformed to the new curriculum substituted in the reign of Edward VI for the old Trivium and Quadrivium. In his first year he read dialectic, the elements of Euclid, translated Demosthenes into Latin, and the orations of Cicero into Greek. The next year he studied logic and translated the philosophical works of Cicero into Greek and Plato into Latin. For his third year, along with his Greek and Latin, he worked on logic, and in his fourth year, with Aristotle as his text, he studied Ethics, Politics, and Rhetoric. Under penalty of removal from college he had to provide himself with copies of Cicero, Demosthenes, Plato, Aristotle, a Bible in Latin and a Greek Testament. The tutorial system was then comparatively new.

Knowing Coke, one can safely trust that he plodded through his Latin and Greek without the aid of a lift on an Italian pony. On Mondays, Wednesdays, and Fridays he attended declamations in the Hall in English, Latin, and Greek. On appointed feast days he had to write Greek and Latin verses each of at least six lines. None of Coke's exercises in versification won preservation to posterity. There was no science and next to no mathematics. For these, the student wanting them

went on to London. Two lectureships in medicine had been founded, one in 1524 and one in 1540; and in 1557, Dr. Caius had established his chair in Anatomy, the first in England, which was to provide instruction for William Harvey, who graduated at Cambridge in 1597. The men for medicine had mostly gone on to Padua or other places in Europe.

In Coke's time at the University, as one result of the Reformation, the study of the Canon Law of the Decretals had come to an end, and with it the old degree of the Canon Law, save for a brief revival under Mary, and the double degree, Civil and Canon, *utriusque juris doctoratus*, traceable, perchance, in the double L for the plural 'Legum' in the later LL.B. But the study of the Civil Law continued. Since this, however, like medicine and theology, was for those past Bachelor, Coke while at Cambridge had no occasion to contaminate his mind with an absorption of the contents of the Digests and the Institutes studied by the Civilians who were Bachelors of Arts on their way to seeking hoped-for diplomatic employment, or practice as Proctors in the Ecclesiastical Courts at Doctors' Commons, or in Admiralty, or as Solicitors in the Court of Requests, and in Chancery, with their possible official prizes of Masterships. They went their ways, Coke his.

When Coke had been at the University about two college years, a sixteen-year-old lad came down from the Merchant Taylors' School in London, and entered sizar at Pembroke. He was Edmund Spenser. But besides the difference of first- and third-year men, Coke was at Trinity, a gentleman pensioner, and Spenser at Pembroke, a sizar. Richard Bancroft, however, was at Trinity, and when he became Archbishop of Canterbury, he again came in contact with his fellow Cantabrigian Coke.

As for recreations, by the Elizabethan statutes of the University, dancing-schools, and for some reason, perhaps the statute against dueling, fencing schools, were not allowed. Quoits inexplicably fell under the ban. The University regulations forbade cards, except for Christmas time. They prohibited participating in or looking on at cock-fighting, bull-baiting, or bear-baiting. As might be anticipated from the way of students from time immemorial, the collegians did not always obey the University rules in these respects, and in-

curred the liability of punishment. It extended to physical chastisement of the offending young gentleman, administered in ordinary cases in the college buttery with the form of the student draped around a barrel for the more effective exposure of the parts to be reached with the rod.

In this connection a decree made while Coke was at the University seems at first thought to indicate a singular antipathy on the part of the authorities to the cleanliness of going in swimming. But on second thought one surmises that bathing suits were not part of the regular equipment of the College student, and that the Vice-Chancellor and the Heads were only showing a proper Christian opposition to the paganism of satyrs dancing on the banks of Cam to the scandal of a Christian countryside. Such an offense merited special punishment, and it was accordingly ordered 'that no person in statu pupillari is to presume to bathe in a river, pond, or any other water within the County of Cambridge, under pain of receiving a severe flogging in public in the common hall in the presence of the Fellows, Scholars, and all other members of the college; and further, if the delinquent be a Bachelor of Arts, he is to have his feet tied and be set in the stocks for a whole day in the common hall of his college and pay a fine of ten shillings towards the commons of all the members of his college before he is let out.

As for sports, the students fished in the streams about and engaged in town-and-gown rows over their right to do so. They played handball, squash tennis, and some form of football. They exercised their skill in archery. It should be remembered that gunpowder and the harquebus had yet only partly displaced the butt and bill of the bowman in the ranks of infantry. There were then no cricket and rowing.

While at college, Coke looked on at a University quarrel symptomatic of the times. The difficult, brilliant, stormy petrel of the Calvinistic English Protestant Left, Thomas Cartwright, Fellow of the University, had returned from a sojourn in Geneva and become Margaret Professor of Divinity. He was not discreet. He denounced pluralities and non-resident benefices, means by which various dignitaries increased their worldly well-being; he called the Spiritual Courts 'damnable, devilish, and detestable.' He said that the

name and office of Archbishop and Archdeacon should be abolished, that Bishops and Deacons should be brought back to the Apostolic pattern, and should be elected only by the Church; that kneeling at communion was a feeble superstition.

This was more than enough. John Whitgift, who had in the July after Coke entered college become Master of Trinity, complained to William Cecil, who might be described as Universal Hearer of Complaints for England. Cecil, with his gentle inclination towards the Church Left, mildly recommended that the radical professor should not touch on the disputed topics. But the scandalized Cambridge authorities suspended Cartwright, who then added insult to his injury by a pulpit denunciation of vestments. Cartwright was popular, and Cambridge generally tended to Low Church as Oxford to High. By way of protest at the treatment he had received, all but three of the students of Trinity appeared in Chapel without their gowns.

Cartwright was dismissed from his Professorship and deprived of his Fellowship. He went his way to his contribution to the 'Admonition to the Parliament' tracts against dignities in the Church, on which Whitgift took the other side, a controversy that played a part in starting Hooker to thinking out the ideas of his 'Ecclesiastical Polity.' He went his way, escaping arrest on the warrant of the Ecclesiastical Court of High Commission, to his ministry at Antwerp and elsewhere abroad; to his prefatory letter in the 'Disciplina Ecclesiastica' of Walter Travers, later the accepted textbook of Puritanism; to his return and imprisonments; to his quiet country charge of the Mastership of Leicester's Warwick Hospital Foundation, and his death in 1603.

And Whitgift went his way, treading the narrow path of State Orthodoxy, not only opposed to Calvinism, as seen in the Cartwright episode, but two years later, according to Dr. Caius, to participate in the iconoclasm of smashing and burning those images and ornaments of the old physician's beloved college that continued remembrance of the Catholic faith. He went his way to become Archbishop of Canterbury, the 'little black parson' of Elizabeth, in accord with her personal ecclesiastical policy, and as Archbishop, to send Coke, risen to

honors, a Testament piously inscribed to the effect that Coke 'had studied common law enough, let him hereafter study of the Law of God,' which sounds as if Coke may not have been one of the minority three Trinity undergraduates who properly wore their gowns to Chapel that disorderly morning.

There is only one personal event in the life of Coke during his college years to record. About the middle of January, 1570, his mother died.

As was common enough with young gentlemen of his day, Coke did not, so far as is ascertainable, take his Bachelor's degree. Apparently at some time in his career, perhaps not until he had achieved honors, and his University honored him with office, he proceeded by grace to the degree of Master of Arts. At least long after, in the kindly remembrance of the days of youth, he looked back with pleasure on his Cambridge years and wrote in the text of one of his law-books:

The Burgh of Cambridge, an ancient City, as appeareth by judicial record (which is to be preferred before all others) where *mos civitatis Cantabrigiae* is found by the oath of twelve men, the recognitors of that assize; which (omitting many others) I thought good to mention, in remembrance of my love and duty *almae matriae academiae Cantabrigiae*.

After a stay of four years, Coke left Cambridge in 1571. Two years later, Francis Bacon and his brother Anthony entered there at Trinity College where he had preceded them.

VII

COKE came riding down to London to enter Clifford's Inn. So often his father had ridden down from Fairham before him. As Coke approached the City, he saw the huge mass and height of Saint Paul's towering and bulking up, like a great galleon rising on a billow above the sharp-crested waves of a red sea of tiled house roofs. Here and there church spires pierced above the red. It was in the year of his father's death that he had heard of the burning of Saint Paul's spire — Catholics had wagged their heads and talked of the wrath of God at the evil things in England. The spire had risen five hundred and twenty feet above the pavement, the tallest in the world. Its square tower base still rose from the dominating mass.

On the south, he knew, the river ran, and the City pressed close to the stream, as a child at the breast of its mother. He could catch sight of the forest of tall masts, rising from where the ships lay in the Pool below London Bridge. There at the southeast corner of the City the Tower stood, and from the Tower the arc of crumbling old wall circled round to its chord of the river, intersecting again at the west, and enclosed the segment that was the City. Reviewing in his mind the wall back from west to east, he knew the eight gates that pierced its arc. They were Ludgate, Newgate, Aldergate, Cripplegate, Moorgate, Bishopsgate, Aldgate, and, back at the Tower again, the Postern.

Already the City was sifting through some of these gates like grain from the rents of a sack pressed full. Out of Aldgate a double line of houses dribbled along each side of Whitechapel Road; a single row along Houndsditch followed the wall from Aldgate to Bishopsgate, where again a double line trickled out; then gardens and fields and open ground. At Cripplegate and Aldergate, the City had spilled populously suburban. Out of Newgate another double row of houses radiated. Coke in anticipation knew well the line of Fleet Street, beyond that mass of Saint Paul's, out through Ludgate past the buildings at White Friars to the Temple. And his mind could reach still farther, past the line of mansions along the Strand on the river-bank, Exeter House, Arundel House, the Bishop of Llandaff's House, Cecil House, The Savoy, Durham House, York House, where Francis Bacon lived, not yet in the least of the thoughts of Coke, past all these to the Palace City, to Westminster Hall and the Law Courts. Though this narration of Coke's arrival in London and his first few days there lacks documentation, it nevertheless presents substantial verity.

But the time approached six, the supper hour; the horse was weary and worn and needed to be stabled, fed, and cared for. The aspirant for honors at the Bar clapped the nag to a brisker pace, entered by Bishopsgate, and, intent on food and rest, heedless of the city about, trotted along Bishopsgate Street, through the Poultry and Cheap Street, to Bread Street, and the Mitre Inn, which, after some mental debate between it and the nearer Mermaid Inn in Cornhill, he had

chosen as a place of temporary abode while getting settled for attendance at Clifford's.

Arrived at the Mitre, he surrendered his horse to a stable boy, with careful instructions, stepped down the two steps from the pavement to the door of the common room, and entered. The guests, already seated at the long narrow table spread with a white cloth, arose, with the courtesy of the times, as he came in. The weary lad, however, ate his supper silently in the crepuscular gloom of a room not light at noonday. He noted that, when the darkness of a night without moonlight came on, the host put candles outside at the front of the inn, as the municipal regulations required; and Coke, looking out before going to his room, saw the slender flickers up and down the street of candles similarly placed, their light doing little more than intensify the darkness by contrast. And so he went to bed, tired, but full of anticipation of the morning.

Even the diligent Coke could take a day or two for London before nosing into the Original Writs. As he scraped the downy growth from his youthful cheeks, he anticipated a day in town. Believing in good dress and always appearing well appareled, Coke pulled on his shirt and his nether stocks and made sure the seams rose in a plumb line from the heels. They had cost him not less than twenty shillings and were pretty fine. He breeched himself in his galligaskins. They were within the sumptuary rules, for, whatever others may have done, this student of the laws abode by them, and Elizabeth founded her proclamation on a statute. But a triple lining made the breeching stand out enough for any one under the rank of Baron; and three and a half yards about, Gadzooks! wasn't that more than enough, at least for a law student? On with his shoes somewhat high of the heel and clogged with a design in silk. On with his clean-white fluted ruff, and be damned to the Puritans, who already spoke of starch as devil's liquor. On with his doublet, the sleeves slashed and puffed like his galligaskins. On with his cloak. He was not a noble and might wear no woollen cloth made out of the realm. But it was in 1565 when the Queen made her proclamation, and it was that same year the Strangers came to Norwich. By the time Coke came to London, the English could make as fine wool cloth as the world afforded. On with his hat, flour-

ishing a bit of feather. And out. A tavern offered as good beer and bread for breakfast as Elizabeth herself commanded.

Breakfast over, he walked up to the Cathedral, not then showing the portico of Inigo Jones that he should see there before he went the way of the generations of man. People clustered about the entrance, lounging, walking, in talking pairs and groups; people went briskly in and out. Within. No religious hush, or sparse kneeling figures. Medieval days had gone; the Reformation had come. However earnestly elsewhere men might meditate the hopes of Heaven, there in Saint Paul's the earthly hopes men set their hearts upon pressed for attention, and ever and anon, as in the centuries before and in the centuries since, turned ashes or they prospered.

Serjeants-at-law wearing their skull-cap-like white coifs and standing at their pillars, conferring with clients, first caught the attention of the young law student ardent for his profession. The honor and dignity of the coif — would he reach to that in his career? Well, if industry would do it, some good natural parts, and, the faith ever dwelling in the heart of youth, of having that something more, he would. Lads were not then long adolescent in mind and will, and Coke especially had a sureness of purpose, untroubled with hazy dreams. Though the serjeants first held his attention, they were few; other barristers, attorneys, merchants, brokers, traders, lenders and borrowers of money, stood and moved all about, engrossed in their affairs. Along the great center aisle, a place to see and to be seen, men promenaded, many with rapiers at their sides, cloaks thrown back to show their linings, and the silk and velvet colors of their doublets, more bravely dressed than the young figure of Coke. The purposes of religion reserved only the distant choir of all that vast place.

Out again, he walked through streets, which, though roughly paved, were not so filthy as they had been; for something of a sewerage system, result of a commission appointed forty years earlier in 1531, supplemented the sanitary benefits of the lead conduit waterworks of far earlier origin. The creaking rumble of an occasional water-vending cart declared the piped supply still inadequate. Houses rose for the most part, a solid street façade, three stories and a gable, of wood beams

and plaster, occasionally of brick, and sometimes of both types of construction. Upper stories overhung, and on the street the booths for the wares of the tradesmen, who lived at the back and above their stores, juttod on the paving.

By the booths, in front of the shops, apprentices, flat-capped, blue-smocked to the calves, stood uttering their cry of 'What do ye lack? What do ye lack?' At some, comely wife or daughter of the master took the place of the prentice boys. Glimpsed within, apprentices stirred more actively at the approach of the master, whose admonitions to diligence were sometimes urgent. 'My master comes like any Turk and bangs me most severely. But let him bang his bellyful.' The song was not written till much later, but drew the perfect picture of the apprentice of all time.

Out from a barber shop floated the tinkling of a lute. Some gentleman waiting to be 'next' passed the time picking on an instrument the shop provided for that purpose, while others who had already received the barber's attentions lingered gossiping. The law student as he passed made a mental note not to idle in barber shops. The barber was chirurgion blood-letter as well, and dentist, and a string of the trophies of his dental art hung behind the gentlemen within.

Though thenceforth in his life young Coke would turn his steps westerly to Westminster, on that first day of his arrival in London to stay he wanted to see London Bridge and take a look at the shipping. He saw what at first sight seemed to be a part of the City built on the water to form the cross line of an H between the buildings on the City river-front and the buildings on the Southwark embankment. For buildings covered a large part of this bridge that Peter, Chaplain of Colechurch in the Poultry, twelfth-century engineer of its great pile-foundation masonry structure, constructed so well that it stood for six hundred and fifty years till men tore it down to erect another in its place for the needs of a city soon to have a population greater than that of all England on the day that Coke came to London. With its superstructure of pointed arches, its chapel to Saint Thomas à Becket, the old bridge rose sixty feet above high water, and dominated all the river view of the City as Saint Paul's dominated the City as a whole. There were places along the parapet not covered

with buildings where one could view the shipping in the Pool below as well as that which had passed through the draw-bridge to the other side.

On that London day the carracks of the Venetian fleet lay at anchor. Sweating stevedores hoisted from their holds and lowered to the lighters alongside sack after sack of those currants of which the sweet tooth of England was so fond, casks of olive oil and wine, bales of silk, cotton and carpets, packages of indigo, alum, drugs — poppy and mandragora, and all the spices of the balmy East — rich freighting gathered from Algiers, Tunis, Tripoli, Alexandria, Aleppo, Damascus, and the Isles of Greece. There, too, were some English ships of the Muscovy Company, and hemp-rope cordage, barrels of whale oil, tallow, hides, flax, the dainty caviar and even more precious things from Moscow, Novgorod, Pleskov, far Kazan, and Astrachan rose out of their holds.

Tackle creaked on ships from the Baltic to take off long spars from the northern forests for the English shipbuilding, to take off tar, turpentine, iron, and niter. Even grain came through their open hatches, for England had not yet restored the balance of its agriculture, overthrown by the encroaching sheep. Some vessels were taking on cargo from the lighters — cloth, cloth, and more cloth, wool, and more wool, tin, and articles of manufacture which English skill was already making the world desire. It chanced that no ships of the Hansa League or the ancient Society of Merchant Adventurers of England were in port that day. But there were several inconspicuous pinnaces, suitable for running the blockade of the Netherlands ports which the Spanish Government had then for two years closed against the English in retaliation for Elizabeth's forcible borrowing of that Genoese money on its sea transit to Alva. And there was a caravel laden with rich wines of Portugal and with costly stuffs from Macao in China and from Goa in India, where Camoëns had written the great *Odyssey* of Portuguese maritime adventure, the 'Luciad,' which, even as Coke looked, was on its way for printing at the vessel's port of Lisbon.

He did not see here in London waters those barques laden with spoils of buccaneering from the sea pillage of the times, which ranged all the way from the show of authority in letters

of marque issued by the Netherlands States-General through to the downright piracy of rovers that infested the coasts of Devonshire, Cornwall, Land's End, and the Irish Sea. Even the complacency of a royal participation in some of these enterprises did not go so far as to make a London rendezvous easy to explain to aggrieved foreign ambassadors. The vessels were small, and few flew the English colors, though Coke would not have understood if some one had so remarked to him. At that time the entire burden of English craft engaged in regular commerce amounted to only about fifty thousand tons, and two hundred and fifty tons made a good-sized ship.

A little way upstream on the City side Coke saw the waterfront of the Steel Yard. This was the London 'counter' of the Hanseatic League, which had its other principal foreign counters at Bruges, Bergen, and Novgorod. Within the walls of the Steel Yard he saw the warehouses, residences, general hall and gardens of the German merchants, who, when their establishment came under Coke's eye, out of their earlier monopoly of the entire German commerce, still retained in the grip of their agreements the trade with North Germany, not only to the exclusion of other foreigners, but even of the English themselves.

At that time the Mayor and Company of the Staple, the ancient Society of Merchant Adventurers of England, and the old company of Merchants Trading to Spain and Andalusia enjoyed monopoly rights in Spain and on the shores of the countries opposite England. But they all suffered somewhat from the unaggressive conservatism of their antiquity. The newer men were coming on. Eighteen years before the year Coke came to London to stay, the unchartered 'Mysterie and Companie of the Merchant Adventurers for the Discoverie of Regions, Dominions, Islands and Places Unknown' had found their way to Moscow, then secured a charter under an even longer name, to be more familiarly known as the Muscovy Company. In a decade from Coke's arrival the Eastland Company for trading in the Baltic, and the Levant Company, procured their trading grants, and still later the Venetian and the Morocco Companies. The expansion of commerce which greatly enriched England during Coke's lifetime was under way.

The river presented an animated sight for the onlooker to enjoy. London was then in a sense a Venice with a single great canal, the river, a highway of local traffic as well as a harbor for shipping. He stood on the only bridge. At intervals along the banks, however, stairs came down to floats on the water, and the watermen crying 'Eastward, Ho!' or 'Westward, Ho!' did an active business with their wherries up and down the stream, or, with other cries indicating their destination, ferried across.

The Globe Theater, which he later saw in Southwark, had not yet risen in the outer semblance of the Bear Garden and its politer amusement within. Indeed, it was five years yet before the elder Burbage built in open country out of Bishops-gate north of Finbury Fields 'The Theater,' probable place of Shakespeare's first employment in London. Since there would be little time for trips to Southwark when studies at Clifford's Inn began, Coke decided to eat at the 'Bear at the Bridge's Foot' and take in the bear-baiting at the usual two o'clock amusement hour.

Southwark was gay and rough and a stench in the nostrils of the growing Puritan element of the London population. Since the south bank lay outside the City jurisdiction, the Londoners, however, could complain, but could do nothing more. In the throng leaving the bear-baiting were numerous women of the uncertain profession of which the neighborhood was the habitat. Coke in his time when the Law Courts were in session saw many such women hanging about Westminster Hall, where their attendance was so regular that in those days they had the special name of 'termers,' and he saw them also 'in Saint Paul's where every wench takes a pillar,' as well as distinguished serjeants-at-law.

London was a city of about one hundred thousand people when Coke came to live there. With an increase in the population of the kingdom, slightly through immigration from the Continent as a result of the religious disturbances there, but mostly through the fecundity of the population, which even infant mortality and the frequent visitation of the plague were not sufficient to offset, an increase sustained through some improvement in agriculture, through the development of woollen manufactures, through the growth of commerce, London ex-

panded rapidly. This urban growth so greatly disturbed the authorities that the Government from time to time endeavored to limit it by a prohibition of new houses, with results, it hardly needs mention, of violation and overcrowding. It was a time of construction of many splendid mansions throughout the land, and a greatly changing city whose population doubled during Coke's lifetime.

VIII

A SWIRLING London now floods about the islands that are the Inns of the lawyers. When Coke entered Clifford's, these Inns came nearer the aspects of extended university grounds with groups of college buildings. Lincoln's surrounded by its walls, and Gray's, both the other side of Holborn, had only the green fields around them; but houses along the side of King's Bench Walk, somewhat screened the Temple and its northwesterly neighbor, Serjeants' Inn. Beyond the Temple, the filthy River Fleet ran uncovered till 1637. The Chancery Inns scattered about the vicinage, mostly along the line of Holborn. One could reach Clifford's Inn from Fleet Street through a passage by old Saint Dunstan's Church, or from Fetter Lane running north from Fleet, or through the Serjeants' Inn. So Coke settled for his first year in London close to his next goal of the Temple.

Since Coke gained admission to the Inner Temple at the end of April, 1572, it may be assumed for the purpose of describing his apprenticeship of the law that he entered Clifford's Inn about the beginning of Trinity Term of the Law Courts in June or July as it may have fallen in 1571. Such a beginning would give him four terms of the Law Courts and two reading vacations at the Chancery Inn, or the substance of a law student's year, before his entry at his House of the Court.

On leaving his chamber of the Inn where he had settled for the year, he found himself in the midst of the activity accompanying preparations of attorneys and solicitors for the opening of the term of the courts and in the bustle of the return of those members who had been away for the Easter holiday—one of those 'dead' vacations in which no official business of the Inn took place. The scene was much like any after holiday college returning, with this difference, that the proportion of

youngsters and maturer men was just about reversed. For the membership of the Inn comprised the whole range of a career in the law. There were the few just beginning their studies. Some, like Coke, were seriously bent on the law as a career, whether like him, by way of the Inns of Court to become barristers, or, continuing members of the Chancery Inn, to become attorneys and solicitors. Some utilized the place as a vantage-point in which to study theology or medicine or science, to which men were then awakening, and others as a congenial home from which to pursue the ever-interesting subject of London with its Court and other varied society. The members of the association, numbering just around one hundred, ranged in age all the way from the youngsters to the seasoned, gray-headed old attorneys.

Dressed as soon as the morning light was strong enough to read by, he had a period of study, and his bread and beer, before his walk of a mile and a half along the Strand to the Law Courts. On pleasant lazy mornings, 'Westward, Ho!' he would take a wherry from Temple Stairs to the dock at Whitehall. However he went, he would arrive in time for the opening of sessions of the Courts at Westminster Hall at eight o'clock. He would choose among the august Star Chamber, the bustling Court of Requests, the quiet Wards and Liveries, the excitement of the King's Bench, or the busy Common Pleas. There was also Chancery, but that's not the common law, and just outside in the adjoining building the Courts of Exchequer and Exchequer Chamber. But Chancery and its offspring, Requests, smack civilian. The greater part of his time he would naturally spend in Common Pleas.

At eleven the courts closed for the day, and Coke would go briskly back to dinner at the Common Hall of his Inn. And after dinner, study; and, save for the interruption of supper, study so long as the light served — study Fitzherbert's '*Natura Brevium*,' a selection of the writs; study the '*Novæ Narrationes*' and the '*Articuli ad Novas Narrationes*,' for pleading; study '*Diversité des Courts*,' a treatise on the courts he had been attending in the morning.

The original writs, tough as original sin, Coke, however, masticated till they turned honey sweet on his tongue — the Writ of Right, '*Rex Vicometi Salutem: Præcipe A, quot juste*

et sine dilatione reddat B,' etc.; the Possessory Writs — Novel Disseisin, Morte d'Ancestor and Darrein Presentment; the Grand Assize and the Assize Utrum; the Writ of Debt, 'Præcipe N quod reddet R centum marcas quas ei debet ut dicit: et unde queritur quod ipse ei injuste deforciat, et nisi fecerit summane eum per bonos sumonitores quod sit coram me vel justitiis meis apud Westmonasterium a clauso Paschæ in quindecim dies, ostensurus quare non fecerit. Et habeas ibi summonitores et hoc breve'; and all the rest of that fiber of the law from the Register of Original Writs out of the rolls of Chancery.

He studied various forms and must have learned many of them by heart. At least one of the Chancery Inns at one time imposed fines for errors in writing them: a farthing for a defective syllable, a half-penny for a defective word, and a penny for any improperly in the writing.

He would consider all he had seen and heard and read, would try to unravel some snarl by questioning his elders, would talk the problems of the law with the other first-year men, and as his own ardency drove him, and his tough mind bit into the stuff, became consulted by his contemporaries, and began to grow into the authoritative and dogmatic manner that developed into habit and hampered popularity.

So the three weeks of the Trinity Term of the Courts would pass, and correspondingly the seven weeks of the Michaelmas Term, beginning the 9th of October, the three weeks of Hilary Term, beginning January 23, and the three weeks or so more of Easter Term.

At the Lent and Summer vacations, one of the barristers appointed by the Benchers of the Inner Temple, on his way to the making of a reputation, came to give the vacation reading. Then, also, there were the moots at which a youngster made his prentice practice essay at pleading, and the elders sharpened their own wits and edified the youngsters in an exhibition of acumen. To penetrate the problem, to know the right move, to make it quickly and accurately — those the things at which they aimed for skill. The moves were more oral, on the feet, then than now, less of the paper work.

But this description of Coke as a law student will not delay here for readings or moots, for the routine of the Inns, the

Commons, or for the special occasions. This year at Clifford's was only preliminary for him, and these things will appear as they were at the Inner Temple in the setting of them in which Coke passed his life.

One special custom of the Commons where he daily dined we will mention. Clifford's had a special table called the Kentish mess. What and wherefore the Kentish mess was, and who ate at this table, nobody now seems to know. But it was an institution at Clifford's, and another institution was a special grace on stated occasions. On these occasions the chairman of the Kentish mess rose, and a servitor came up to him with four small loaves of bread joined in the shape of a cross. The chairman bowed gravely to the principal of the Inn at the head of the table and took the loaves from the servitor. Profound silence pervaded the hall. Once and twice and thrice the chairman dashed the loaves on the table. Then the members of the mess solemnly passed the loaves down to the last man, who carried them from the hall. They were given at the buttery door to old women who waited for them there.

Not merely the grace of the Kentish mess, but even the whole organization of the lawyers, suggests some ancient mystery into which the neophyte entered, and through the degrees of which he came to the wisdom he sought. Yet the English mind made of all this a very practical manner of living and learning no more Oriental than the Englishman himself, who hides the flicker of the mystic in him under a bushel of concealment in appearance, manner, and action. There were three major divisions of the lawyer class, indicated by the symbols of the Inns of Chancery, representing the attorneys and solicitors; the Inns of Court, representing the barristers; and Serjeants' Inn, representing the order of judges and those worthy to be judges, although still practicing. The mystery slowly developed and slowly changed, but it appears in the glimpse here as it was in the last half of the sixteenth century.

All the judges formed a body of visitors for both the Inns of Court and the Inns of Chancery, and at times issued orders regulating them. Subject to this supervision the members of the houses constituted a self-regulating, voluntary association

governed by a coöpting board variously named in the several Inns — in Clifford's, as the Ancients. In this community of the lawyers there were eight of the Chancery Inns. Of the various surmises about their generic name, as good as any seems to be that of an origin from the fact that clerks of Chancery did study in them.

The four Inns of Court, Gray's, Lincoln's, the Middle Temple, and the Inner Temple, appointed the readers for these Chancery Inns, settled the order of precedence of their principals for formal occasions, and received from any of them such of their students seeking the career of barrister as the Court Inns chose to admit. Since the Chancery Houses recognized no precedence among themselves, yet, as precedence could not be avoided at dinners and other events, leaving it to the arbitrament of the Court Inns might be regarded as equivalent to a reference to chance, like the turn of a coin. Other than in the appointment of readers, the Inns of Court exercised no real jurisdiction over the affairs of the Chancery Inns. In this matter of the appointment of readers, Clifford's, Clement's, and Lyon's Inn were connected with the Inner Temple; New Inn, with the Middle Temple; Thavie's Inn and Furnival's Inn, with Lincoln's; Barnard's Inn and Staple Inn, with Gray's.

Coke came at a period when the division between the attorney and the solicitor on the one side, and the barrister on the other, was being more sharply marked. In 1557, the Inner Temple ordered that in the future no attorney should be admitted to the Inn; and in a later order of that year, that all future admissions to the Inn be on condition that if the member should practice as attorney, such practice in itself should be a dismissal, and the member should repair to an Inn of Chancery; and in 1574, when Coke had been a member for two years, further ordered that all of the attorneys who had been admitted prior to 1554 still remaining should leave. Such inhospitality of the Hospitia provoked retaliation, and the Chancery Inns came to be ungracious in their reception of students on their way to the Court Inns, so that in 1629 Matthew Hale entered Lincoln's Inn direct from Magdalen College, Oxford, leaving John Selden, who followed Coke at Clifford's and the Inner Temple, the last of the great names

coming to the Bar of those who were initiated in the Chancery Inns.

IX

THE Treasurer of the Inner Temple found the owner of a manor in Norfolk, son of a barrister of Lincoln's Inn, and member of Clifford's, a gentleman adequate to the traditions of the honorable 'Society' of which the Treasurer was the principal officer, and admitted Edward Coke to its membership. The distinguished officer assigned a chamber to the neophyte, and attended to the little financial transaction necessary in that connection. So Coke became at once a member of the best of clubs and of the second degree in the mystery of the law, a clerk-commoner of a house of court. The club then numbered a little under two hundred members, who did themselves very well, if you please.

The horn blew for dinner. As Coke came into the Great Hall of his Inn, he saw a gallery extending across one end and a screen concealing that part of the Hall beneath the gallery. A huge fireplace marked the center of the Hall, and four tables filled all the space of the room up to the screen. There was no indiscriminate sitting where one chose. Coke joined his fellow clerks-commoners, or moot-men, gathering at the lowest table, the one farthest removed from the screen and gallery end of the Hall.

Though he and his table-mates had attained this second degree on their way to the honors of the Bar, they were of the lowest grade of the members of this house. He looked up to the table in front of the screen at the distinguished Heads assembling there, the Treasurer and his fellow Masters of the Bench, or more familiarly the Benchers, the self-perpetuating governing body. With them came the Reader for the term, the Master of the Temple Church, and such Judges and Serjeants who had been members of the Inn before the Sovereign had called them to the highest order of all as still chose to retain their old chambers instead of moving over to the near-by Serjeants' Inn.

At the next table below the Heads, he saw the utter-barristers, the seniors at the Bar, men who, after years of study, had received the honor of a call to this grade or degree by the

most honorable Benchers. The Reader, then with the Benchers at the head table in recognition of the learned distinction his appointment conferred upon him, belonged to the mess of the utter-barristers; but doubtless the Benchers would soon make him permanently one of their own mess by calling him to be a fellow Master. At the table between his own and that of the utter-barristers, were the inner-barristers, men who had received their first call from the Benchers. They were still juniors, not yet entitled to plead at court, must still keep certain vacation sessions to learn from the Readers, and must still participate in certain moots before they could rise to the utter-barristers' mess.

Coke and such of his messmates as, like him, were intent on a professional career in the law, looked forward to some eight years of study before they could become utter-barristers entitled to appear in court. Such of his associates — for this is an even more socially honorable club than that of his Chancery Inn — and many of his fellow students here as there read other books than those of the law, and some did not read much in books at all, but pushed their fortunes among the ducal courts, or even at the royal court itself.

Invisible behind the screen and under the gallery the clerks of the Benchers sat at the yeoman's table. At ordinary commons, no one occupied the gallery. Its use will appear later.

Visible on the walls hung the escutcheons of former Readers, among them that of Thomas Littleton, Reader Tempore Henrici VI, and author of a certain neat essay on Tenures.

Those distinguished gentlemen at the upper table just taking their seats — there was a little ceremony to perform, Coke knew, before he could settle to his meal. He and his fellow clerks-commoners went to the service dresser and first took the Benchers' joint from it to the head table and served it there, and next carried the joint for their own mess to their own table. The Master of the Temple Church said grace.

Then Coke dined. And became acquainted with the senior in membership at his table, Abbott of the clerks-commoners, and with the others of his companions.

But Coke did not take much ease in his Inn. Continuing to attend the sessions of Court at term time, he settled his

neck into the collar of the statutes, of that essay of Littleton on Tenures, of Brooks's 'Abridgement of the Year Books,' and of other law volumes of which there were plenty to keep him busy. Latin, generally good enough of the post-classical idiom kind, Norman-French, good, indifferent, bad, and very bad; crabbed English, black-letter stuff — day by day the jaws of his mind triturerated some part of them, and its digestive processes absorbed them into its very substance.

Summer vacation came again. Instead of going to Westminster after his early study hours, the first Monday morning, Coke took a seat in the Hall before eight o'clock. At eight, attended by two fellow utter-barristers, the Reader, clad in his Reader's gown with the satin gore in the back, entered from behind the screen, and began his exposition of the statute he had chosen for his reading. He had prepared, as was required of him, the customary number of states of fact raising doubtful questions of law on the statute. Some of these he propounded, and elucidated his own conclusion.

When the Reader finished this first part of the morning's exercise, the senior utter-barrister present, selecting in his discretion one of the problems the Reader had presented, took the view opposed to his opinion. They argued the point. Then the judges and serjeants who had chosen to attend expressed their opinion.

Next, as was his duty in the order of the proceedings, the youngest utter-barrister attending took up another of the Reader's problems; and the exercise continued as with the first problem discussed.

So with further of the problems of the Reader, the utter-barristers present, alternating in next higher and lower seniority, took the opposition. In this formal manner the reading lasted for two hours or so, until near the eleven o'clock dinner hour. And correspondingly, the ceremony and the reading continued each morning for some weeks of the vacation.

And Coke sat there, and sopped it all up into that law-soaking brain of his.

After dinner, as was his duty, as well as certainly his pleasure, Coke discussed the morning's problems with his fellow members attending the vacation session.

Writing of these readings, Coke said:

First they declared what the common law was before the making of the statute; secondly they opened the true sense and meaning of the statute; thirdly, their cases were brief, having at most one point at the common law and another upon the statute; fourthly, plain and perspicuous, for the honor of the reader was to excel others in authorities, arguments and reasons for proof of his opinions and for confutation of the objections against it; fifthly, they read to suppress subtle inventions to creep out of the statute.

After supper every day in vacation time, an utter-barrister brought to the head table a question for argument, and if the Treasurer, or, in his absence, the senior Benchers sitting, thought it suitable, he called on four Benchers to divide into sides and to argue the case. After argument, the presiding Benchers called on the barrister to present another case, and sometimes a third, which was argued in the same way. These were called the Bench table cases.

Three times a week Coke heard a somewhat more formal exercise of the House. One of the clerks-commoners delegated thereto prepared and wrote the statement of a case. When the horn blew for dinner, he came in with it written out and placed the paper under the salt-cellars on the clerks-commoners' table. Any one in the Hall who took the statement up to read was subject to suspension from commons and fine. Not even the briefest preparation for argument was to be possible. After dinner, the Abbot proceeded to the Benchers' table and announced that the clerks-commoners had a case to present to their Masterships. The presiding Benchers called on the student who had prepared the case to state it, and appointed certain of the barristers to argue. This was a moot.

X

ONE night at supper in Trinity Term, the two youngest butlers stood at the lower end of the Hall each with a great candle. Lighting these tall wax torches, they marched to the head table and placed them in front of the venerable seniors, who arose and announced that the Benchers in a Parliament held that day had entertained a petition for a Grand Christmas to be observed at the next Christmastide, had consented,

and had designated the officers for the holiday. With a cheer all the commons arose, and joyously joining in line behind the Benchers, marched around the Hall in front of the fireplace, raising their voices in a resounding carol.

The protracted summer vacation with its readings and moots and other exercises passed. October, with the long Michaelmas Term of the Court lasting to December and the day before Christmas came.

Though only noon, it was the beginning of Christmas Eve. Musicians and the gentlemen of the Inn, with the honored guests, gathered in the Hall and formed the order for the procession. Coke's group of clerks-commoners had with them, as guest of the Inn, the Lieutenant of the Tower of London. Servitors of the House moved about and spread the fair damask cloths on the tables, laid the silver and gilt salt-cellers, the candlesticks, and at each place a napkin, a trencher, silver and gilt spoons, a silver cup for the wine, and a green pot for the beer. When they had put the bread on the tables, the processions started.

Minstrels went before and struck up their rattle of the drum, shrill of the fifes, wail of the violin, all sounding out against the swelling volume of solemn sackbuts and blaring cornets. After the ranks of the musicians came a pair of gentlemen, the Steward and the Marshal, and after them one gentleman, the Server, and next a line of five servitors of the Inn, each holding up before him the smoking brawn of a great boar's head. Then in their ranks came the succession of those who were to sit at the several tables.

In the first division of the procession following were the Senior Benchers with the Master of the Temple Church, the Queen's Serjeant and the Queen's Attorney, guests for the day, the Benchers and the gentlemen appointed for the Grand Christmas as Chief Butler, Server, Cupbearer, Carver, four Masters of the Revels, Ranger, Master of the Game, and outstanding among them all, the pomp of the Constable Marshal, resplendent in full white harness of armor adorned with gold, helmet waving a gorgeous plume of many vari-colored feathers, and holding in his hands the golden pole-axe of his office, its staff reaching nearly to the floor and its head aloft by his gleaming helmet.

Caput apri inferens!

The music reverberated through the room. When the procession arrived at the head table, the Steward, the Marshal, and the Server turned about and curtsied to the Benchers, and passing between the screen and the table, curtsied to the Benchers again, and again at the farther end of the table; and as these leaders marched on, the Benchers, guests, and officials of the holiday who were with them, arranged themselves about their board, the senior at the head place, and at his right, the Master of the Temple Church. The minstrels, playing, marched around to a position in front of the blazing hearth, and formed facing the table of the Benchers, still sounding forth while those honorable masters and the rest of the company took their seats; then the minstrels marched into the buttery, whence the tones of their music floated out and echoed in the ancient hall.

The Master of the Temple Church said grace.

Wine was poured; the Queen toasted; the Servitors went about their duties with towel-draped arms, and placed fowl and meats and cakes before the seated gentlemen. The minstrels returned, and the members came to their second course with the same processional as before. Servitors and musicians withdrew behind the screen for their dinner at the yeomen's table. At the end of the members' meal, the minstrels came in once more, and gathering by the head table, closed the ceremony with a song.

'After a little repose' the officers of the holiday had the tables cleared and set aside, and the Hall arranged for revels. Both afternoon and evening the ladies came, and for a time fair faces tinged from hearts that warmly beat, and little feet, that then came peeping in and out, erased remembrance of jealous Mistress Law. Beruffled and velvet-clad, these gentlemen in doublet and hose, these ladies in tight-laced stomacher and voluminous petticoat, by the firelight and in the flicker of the candles they danced. Heigho! Our Coke was young.

Knights Templars no longer went on crusades or returned from them, but long since were gone on the last adventure from which there is no returning; and to their old Chapel Coke went with the barristers of the Inner and Middle Temple Inns

on Christmas morning, and heard the Master of the Temple Church, the venerable Canon Alvey, read the service. After service, they 'repaired into the Hall to breakfast with brawn, mustard and malmsey.' God rest ye merry, gentlemen, let nothing you dismay. They ate, they drank, they danced. They sang and sang. The revered senior Benchet himself piped out a solo, and ordered whom he would to sing. Choruses of the commons rolled to the roof. The indefatigable minstrels were ever there to usher the processions and fill the Hall with their music. For twelve days 'the like course was observed in all things during the time of Christmas.'

Though after those twelve merrymaking days it was twelve long months to another Christmastide, the barristers from time to time broke the tedium of routine with other festivities. They loved pageantry and beautiful ceremony, those Elizabethans, and organized a procession whenever occasion offered. For New Year's Day, which, one must remember, then came the twenty-fifth of March, they repeated the ceremonial dinner of Christmas Eve.

Banqueting Night was Ladies' Night. Minstrels in the gallery above the screen again filled the Hall with music. The ladies sat on stands erected around the walls to watch the entertainment the barristers provided, and after the games, the hosts seated their guests at tables placed in the Library, and served while the ladies ate.

On Saint John's Day, the Lord of Misrule stirred abroad early in the morning, and summoned whom he would to attend, but after Church and breakfast of brawn, mustard, and malmsey he lost his power. Whether his impotence resulted from the exorcism by Christianity or from such a breakfast, the reader may surmise. But at nightfall he resumed his sovereign sway.

On Saint Stephen's Day the barristers had for guest the gorgeous-robed Lord Chancellor from whose office issued the writs which began all actions at law. The Constable Marshal of the Inn came in the array of his beplumed helmet, white gilt armor, and gilded pole-axe, and in like array the Lieutenant of the Tower of London. The musicians marched in files of four, a file of drums, a file of fifes, and four files of trumpeters. Four men in white harness to the waist, with

halberds in their hands, bore on their shoulders a float of the Tower. In stately step the procession marched thrice past the fire, then, halting, the bearers lowered the Tower, and the Constable Marshal knelt before the Lord Chancellor and declared his purpose to be admitted into the service of His Lordship. The Chancellor responded that he would take the matter under advisement, whereupon the Constable Marshal handed his bare sword to the Steward and he passed it to the Chancellor, who directed the Marshal to seat the Constable and the Lieutenant.

With springing step another pair came in. These two, the Ranger of the Forest and the Master of the Game, clad in green velvet, each bearing a hunting horn on which he blew thrice a hunting call; and thrice they paced about the fire.

Then the Ranger of the Forest, standing behind the Master of the Game, advanced, knelt before the Lord Chancellor, and desired to be admitted into the service of His Lordship, who, as before, responded that he would take the matter under advisement, and directed that they be seated.

Thereupon a huntsman with a fox bound at the end of a staff entered, and after him attendants with ten pairs of hounds on leash. They freed the fox, unleashed the hounds, and wound forth their hunting calls as the dogs set upon and killed their quarry.

XI

PETTY cares of life vexed even learned Benchers. On January 29, 1574, these Masters, with a lawyer-like preamble that 'Whereas the house is greatly indebted and far behindhand, by reason whereof it is the worse served both for bread, drink, meat and divers other things, for that the creditors are not in any reasonable time paid such sums of money as are due unto them for their wares, the only occasion whereof hath grown through the non-payment of the debts and duties of the House,' for the reformation whereof the Benchers resolved that one of the butlers be ordered to stand at the hearth of the House and demand payment of the indebtedness of members; and if on such demand, the debt were not paid within twenty days the delinquent should be debarred from his chambers and from Commons; and, further to meet the exigencies of the

House, on February 7 they placed a surcharge on the dues of the members.

The Inns lost pewter, one presumes by way of servants' and not the members' doors, and in November of the same year, the Benchers, with another preamble 'Whereas, as well on the feast day of the Purification of Our Lady as well as on the feast day of All Hallows great store of pewter hath been used to be lost within this House, partly for want of diligent porters in keeping the doors of the same, but chiefly by the great negligence of the Master Cook of the House, to the great loss and charge of the House, for the reformation whereof it is ordered that the Master Cook shall be allowed at each of the said feast days 8s. for the payment of sufficient persons to act as porters, and in the future the said Master Cook to be chargeable for all pewter lost.' The dish might have eloped with the spoon on Halloween, but not on the feast day of the Purification of Our Lady.

Continued complaints of the quality of food and drink may have led to the apprentice case of Coke, the story of which rests on the authority of Lloyd's 'Worthies.' The moot-men had complained of the quality of their commons, blamed the cook, and asked the Benchers to dismiss him. Apparently the Benchers took the position that they could not discharge the cook without breach of contract and Coke that the cook had already committed a breach of his agreement for services for which he was subject to dismissal. The tale is that Coke showed such knowledge and skill that he gave satisfaction to his fellows and won the admiration of the Benchers. The matter become known as 'The Cook's Case.'

Coke kept getting tangled up with cooks, not only in the spelling of his name, which often appears in the records, and in the correspondence of the times, as 'Cook' though he always spelled it 'Coke.' The Inner Temple records show that years later than the time of 'The Cook's Case' he was called upon by the Benchers to act in a dispute between two claimants to the title of Master Cook of the Inn.

A little eddy of the restless religious situation twirled by close to Coke during his first years as a gentleman commoner of the Inner Temple. In November, 1574, the Benchers ordered that four of the barrister members of the Inn, Thomas

Bawde, Robert Atkynson, Arden Waferer, and Andrew Gray, should be disbarred unless within a year they should, by God's goodness, reconcile themselves and amend their defaults and their reconciliation be certified to the Inn by the Bishop of London. A year later, the orthodoxy of another Atkinson, William, fell under suspicion, and the Benchers thought it good that he should, by procuring letters from the Bishop of London, purge himself of such suspicion as had been conceived of him. Apparently they wanted the best evidence obtainable in the matter of the standing of their fellow members at the bar of Heaven.

It appears from further orders of the Benchers that occasionally members required other regulation than religious. Some of the irregularities were merely infractions of good manners, such as called for the penalty of 6s. 8d. fine for wearing cloaks or hats in church, buttery, or hall; for a prohibition against going into the City booted and spurred unless the member were riding out of town; for fine and possible expulsion on account of playing cards or dice in the Hall or elsewhere in the House. Other orders indicated offenses of a more serious character and suggest that the less studious were roisterous in their quarrels after their pursuit of fortune and pleasure in the ducal palaces and elsewhere. There was an order against 'shooters with guns' within the Inn, and one against coming into the Hall with any weapon except dagger and knife, implements which would seem to be adequate to ordinary occasions. William Parry was expelled for the disorderly conduct within the House of assaulting Hugh Hare with a dagger. Francis Tresham, who will appear again in these pages, was expelled for three years and sent to prison for the stroke of a blade given in the Hall. Life was vivid. But Coke did not come the primrose path.

He lived six hard-working years in the brick-red buildings set in the lovely flower-grown lawns sloping to the river-bank. He moved about among those buildings where not only the members of the Inn had their chambers, but where also the Clerk of the Crown, the Prothonotary, and the Filacer of the Court of Common Pleas, the officers of the King's Bench, of the Exchequer, and others had their offices. He drank his beer from the convenient Temple brewery just west of the



LORD BURGHLEY
National Portrait Gallery, London

Hall. He saw constructed by gift of Robert Dudley, become Earl of Leicester, feasted patron of the Inner Temple, an addition to Fuller's Chambers belonging to the Inn. He had for Reader in Lent vacation, 1574, Edmund Anderson, to become Sir Edmund, and, in 1582, Chief Justice of the Court of Common Pleas, who was then giving his third reading. As a trifle in the conflict of Common Law and Equity, he enjoyed seeing the Masters in Chancery reduced from their previous official precedence over the Attorney-General, the Solicitor-General, and the Serjeants to rank below them because of royal offense at one of the Masters, Dr. Barkley, who addressed the House of Commons in 1576 without obtaining Government leave. In close association with his elders, Coke had opportunity to learn who was who and what was what in the busy intriguing, ceremonious officialdom and society that buzzed about the Queen.

As for the world outside the Inns of Court in the seven years after Coke came to London. Just before he came, in February, 1571, the Queen had made Sir William Cecil Baron of Burghley. On the Continent the Prince of Orange continued to lead the heart-breaking revolt of the Dutch against Philip II; and as an incident, in April, 1571, his fleet captured certain Spaniards and took them prisoners to England, where Spanish gentlemen were bargained off in the Devon market at one hundred pounds each, and kept prisoner in the Court-House until their friends bought their freedom. The Parliament of 1571 passed an act of attainder against the Dukes of Westmoreland and Northumberland and their companions in the Northern Rebellion who had escaped to the Continent. After an outburst of Protestant oratory in the House, the Queen sent a message to the Commons not to meddle in affairs that did not concern them and to avoid long speeches. One Strickland, who introduced a prayer-book measure, she reprimanded and forbade his return to the House, but discreetly withdrew her order on the cry of privilege.

Mary Stuart remained in custody at Tutbury. The Duke of Norfolk fluttered around the fascinating candle of her claim to the English throne and herself, still fair, though scandal-spotted. Coke had the chance to observe his trial and conviction for treason in January, 1572, and his execution

on June 2 of that year. The Queen of England continued to play her game of suitors, and Catherine de Medici moved up in turn as candidates her sons, the Duc d'Anjou and the Duc d'Alençon, Elizabeth's 'Little Frog.'

The Massacre of Saint Bartholomew took place. In Holland the dykes were cut, and Coke saw the London churches pour out money for the Dutch, and English volunteers stream across the Channel to help the Prince of Orange. In January, 1573, Elizabeth acknowledged James as King of Scotland, and in 1575, she had some Anabaptists burned to show Catholic Spain that she was impartial. Also with the reform in the currency the good management of Burghley, Gresham, and the Queen, Elizabeth, whose predecessors, and she herself at the beginning of her reign, had had to pay fourteen per cent for money in Antwerp, could borrow there at five per cent. Philip had no credit on any terms. Charles IX of France died in 1575, and Henry III succeeded him. In 1577, Drake sailed for the Pacific on his voyage in the Golden Hind that still enthralles imagination. In March, 1578, the Scotch Lords agreed that the twelve-year-old King James should be deemed to have attained his majority.

And April 20, 1578, the Benchers of the Inner Temple called Coke to the Bar. He was then twenty-six.

BOOK II

THE LAWYER

There are (saith Euripides) three virtues worthy our meditation: to honor God, our parents who begat us, and the common laws of Greece; the like do I say to thee (gentle reader) next to thy duty and piety to God, and his anointed, thy gracious Sovereign, and thy honor to thy parents, yield due reverence and obedience to the common laws of England: for of all laws (I speak of human) these are most equal and most certain, of greatest antiquity, and least delay, and most beneficial and easy to be observed.

EDWARD COKE

BOOK II

THE LAWYER

I

FROM the time of Coke's call to the Bar at the Easter Term in 1578 until about the middle of the following year, no client disturbed the quiet of his chambers at the Inner Temple. He was able, without hindrance, to follow his habit of retiring very early in the evening, and getting up at three o'clock in the morning to study, and then, as a briefless barrister, to attend the sessions of the Courts at Westminster.

On a drowsy Sunday morning in the ordinarily peaceful and law-abiding church on the manor of Henry, Lord Cromwell, at Northlinham, in Coke's native county of Norfolk, two strange preachers whom Lord Cromwell brought up from London preached sermons, in which they inveighed against the Book of Common Prayer, saying it was impious and superstitious. In the time of Elizabeth, with the still uncertain status of the Established religion, a slight deviation from the narrow path mapped out in religious matters was likely to be visited by heavy penalties. Perhaps it was partly the thought of the punishment that might be imposed upon him for failing to stop such utterance that made the modest vicar of the church remonstrate with the lord of the manor against permitting the strangers to preach on the following Sunday. At any rate, Lord Cromwell became incensed at the temerity of his vicar. 'Thou art a base varlet, and I like not of thee,' said he. To which the vicar replied, 'It is no marvel that thou likest not of me if you like of these,' meaning the preachers, 'that maintain sedition against the Queen's proceedings.' Whereupon the noble lord sought the aid of the law to assuage his wounded feelings, averring that the poor vicar had been guilty of *scandalis magnatum*, a base slander upon a peer of the realm, which his Lordship could only wipe out by a verdict of a court and jury and the imposition of smart money. He repaired to counsel learned in the law, who, in due course,

drew up their bill of complaint, which the vicar was obliged to answer.

The vicar came to Coke, who on his behalf pleaded a justification of the slander. But the Court held the defense insufficient and granted judgment against the vicar. Then Coke discovered a vital defect in the plaintiff's declaration: the act which his Lordship accused the vicar of violating was in the law French of long ago, whereas the pleadings were required to be in English. Hence, that part of the act which the plaintiff claimed was violated had to be translated, and Coke found several inaccuracies in the translation. He thereupon moved in arrest of judgment and for dismissal of the complaint; the motion was granted, and the declaration dismissed. One may easily imagine the stir which the sudden and dramatic reversal of the case must have made, and the admiration of the country folk for the astute defender of the humble vicar against the powerful noble.

Though Lord Cromwell thereafter brought a new action upon amended pleadings, it was soon settled without coming to trial.

In his later years, Coke evidently felt very proud of the way in which he had handled the cause; for, remarking that this was his first case in the Court of King's Bench, he gives the following sage advice in Volume I of his Reports, published in 1603, almost a quarter of a century after the trial:

In this case, reader, you may observe an excellent point of learning in actions of slander, to observe the occasion or cause of speaking of them, and how it may be pleaded in the defendant's excuse. When the matter in fact will clearly serve for your client, although your opinion is that the plaintiff has no cause of action, you take heed you do not hazard the matter upon a demurrer; in which, upon the pleadings and otherwise, more perhaps will arise than you thought of; but first take advantage of the matters of fact and leave matters in law which always arise upon the matters in fact ad ultimum and never at first demur in law when after trial of the matters in fact, the matters in law (as in this case) will be saved to you.

This success in the slander action brought by Lord Cromwell had an immediately favorable effect upon the fortunes of Coke at the Bar.

The Benchers of the Inner Temple designated him, younger than usual for the honor, Reader of one of the three Chancery Inns for which that House of Court made this appointment, Lyon's Inn, a late establishment of the lawyers' houses founded as recently as the reign of Henry VIII, and in the census of members tying with New Inn and Furneal Inn with the number of eighty. Only little Thavies with forty was smaller. So, daily, during the summer period of his reading, Coke walked from the Inner Temple across the Strand, beyond the Church of Saint Clement, past Clement's Inn and New Inn, to Lyon's Inn to meet his group of probably about thirty who remained in residence there during the summer vacation of the Courts. Report of the excellence of his readings increased his reputation.

II

IN Coke's second year at the Bar, when he was but twenty-seven years of age, he was one of counsel in a case which aroused extraordinary interest, and became a classic in the law, a case known, by name at least, if not by the rule therein applied, to the veriest tyro — Shelley's case.

A distinguished array of lawyers appeared in the cause. For the party plaintiff, there was Edmund Anderson, the Queen's Serjeant, who had been Coke's Reader in the Lent vacation of 1574, and later became Chief Justice of the Court of Common Pleas; there was Serjeant Francis Gawdy, who was to succeed Anderson as Chief Justice; and there was also another serjeant. Solicitor-General Sir John Popham, afterwards Chief Justice of the King's Bench, Cowper, and Coke appeared for the defendant, Henry Shelley. One may readily imagine that Popham, with the heavy burden of political and other duties, let his bright junior associate, Coke, labor at the time-honored junior's occupation of looking up the law.

Nicholas Wolf had brought an action of trespass, alleging that Henry Shelley, 'with force and arms the close and house of him, the said Nicholas Wolf, broke and entered, and his grass to the value of one hundred marks there lately growing, with certain cattle, that is to say, horses, oxen, cows, hogs, and sheep, fed, trod down and consumed, and other harms to them did'; all to his damage in the said sum of one hundred

marks. Henry Shelley entered a denial and demanded trial by jury.

This alleged foray of the flocks and herds raised the essential question as to whether Richard Shelley, under whom Wolf as lessee had occupied the premises, was the true owner, or Henry Shelley, whose horses, oxen, cows, hogs, and sheep had in fact fed, trod down, and consumed the grass. Back of the simple facts declared lay a specter of sudden death, the complications that the birth of a posthumous child may cause, and the familiar scrambling of the surviving members of a family for the possessions of their deceased ancestors.

The case was argued in the Court of King's Bench on three occasions; and before the Court was ready to announce its decision, the fame of the cause had reached the ears of Queen Elizabeth, who ordered the Lord Chancellor to summon all the judges of England, including, besides himself, the Chief Justice of the Court of King's Bench and all his associate judges, the Chief Justice of the Court of Common Pleas and all his associate justices, the Chief Baron of the Exchequer and all the other Barons of the Exchequer.

All these judges met at York House, the official residence of the Lord Chancellor, and heard the arguments of counsel. A few days later, they all assembled again, this time at Serjeant's Inn, and heard further arguments on the case; and after the hearing they conferred among themselves. At the next term of Court, the judges all met once more for conference on its problem, when they arrived at a decision, which, however, they did not announce until some days later. It was in favor of the defendant, Henry Shelley, on whose behalf Coke had been engaged with his leader, Popham.

Since the problem presented so much complexity that all the judges of England found difficulty in solving it, the narrative will not at this point enter into the somewhat intricate events and questions of law involved. The facts to which the law was applied are a rather interesting tale of family fortunes, and the application of the legal principles they evoked are a neat matter of lawyer's work. A reader who would like to know what Shelley's case really was will find a statement of it made after the end of the story of Coke's life.

Though the rule of law involved was not new, for it had



SIR JOHN POPHAM
National Portrait Gallery, London

been applied as early as 1325, the amount of deliberation on it in this action, and the great interest the case aroused, gave it such fame that the principle became known as the 'Rule in Shelley's case,' which may be stated as follows:

When an ancestor, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the words 'the heirs' are words of limitation of the estate, and not words of purchase.

III

THE facts in Cromwell's case show one small bursting bubble of the religious ferment of Catholicism, State Orthodoxy, and Calvinism in all the gradations in which they entered into individual belief and overt manifestation throughout the population of England. The discipline imposed for religious nonconformity on certain members of the Inner Temple during the law-student days of Coke also shows it simmering.

Canon Alvey, loved of all the Templars, grew infirm and unable to discharge the duties of his Mastership, and Walter Travers became assistant at the Temple Church as Lecturer. When Canon Alvey died in 1584, Burghley supported Travers for the succession. Travers had become a Fellow of Trinity under Whitgift, who found him of such 'an intolerable stomach' that the authorities there got rid of him by making his life so uncomfortable that he went to Geneva and a foreign ordination at the hands of Cartwright. Whitgift, as Archbishop of Canterbury, wrote unfavorably of Travers to the Queen, and proposed one Dr. Bond, presumably Dr. Nicholas Bond, later president of Magdalen College, Oxford. As between Burghley and Whitgift, it is likely in such a matter that Dr. Bond would have come to preach in the Temple Church; but the rival recommendations gave Sandys, Bishop of London, a chance successfully to propose Richard Hooker.

Meanwhile, the barristers of the Temple Inns, who represented all the varieties of English religious attitudes, except the more overt aspects of nonconformity, had taken sides, and a sufficient number favored Travers to enable him on Sunday afternoons to preach doctrines of Genevan hue in the Temple Church, where Hooker had more officially presented the Lambeth shade in the morning.

They were able protagonists for their respective views, and drew crowds to their sermons, until Whitgift prohibited Travers from further preaching. Though Travers had the support of Burghley and Leicester, on his appeal to the Privy Council he lost. The controversy had stirred up so much feeling that the gentle Hooker sought escape; and on being appointed prebendary of Salisbury in 1591, he resigned his Mastership of the Temple. When later the Puritan Parliament suppressed the Prayer Book, it put forward Travers's 'Disciplina Ecclesiastica' under the name of 'A Directory of Government' as the Church Manual. It was while Master of the Temple Church that Hooker began writing his 'Ecclesiastical Polity.'

Though in the intimate circle of the Inner Temple, all this was a part of the life of Coke, in 1582, two years before the death of Canon Alvey, the young lawyer's chambers at his House of Court had, with the end of his bachelorhood, ceased to be his real home and became only his place of work.

IV

AMONG the gentry of Norfolk, like the Cokes, thriftily risen from good yeoman origin, were the Pastons, whose letters, preserved from the fifteenth century, are a mine of information about the times. Constantly in litigation, they held a knowledge of the law in high esteem. 'Thynk onis of the daie of youre faddis counssyle to lerne the lawe.' Agnes Paston had written in 1445 to her son Edmond at 'Clyffordis Inn,' where Coke was to enter a hundred and twenty-six years later, 'for he seyde manie tymis that ho so ever schould dwelle at Paston schulde have nede to conne to defend hymselfe.' One of the yeomen, Clement Paston, borrowed money to send a son, William, to London to study law, and this son made such advantage of his opportunities that he became a Justice of the Court of Common Pleas in the reign of Henry VI. Of the Judge's sons, John, it is interesting to note, was executor of the will of the stout-hearted old soldier Sir John Fastolfe, whom Shakespeare badly libeled in the caricature of him as Falstaff.

From the Judge the tradition of the law as a pursuit came down through son and grandson to great-grandson, William

Paston, who, in 1582, was dwelling in Norwich in the fine old house of Isaac's Hall. He was a counsellor of high reputation, retained by the municipal corporations of Norwich and Yarmouth, elderly, with a family of twelve children, of whom the daughter, Bridget, was then eighteen years of age. Coke, with his Norfolk home, close Norwich connection, and the natural intimate acquaintance of country gentlefolk, had doubtless known Bridget from her childhood. When she had grown to the customary Elizabethan age of marriage, he asked for her hand. He was then thirty-one, already with a notable reputation at the Bar for so young a man, and, as his father's heir, a person of substantial property, a good match for even this county heiress. The father of the girl showed his favor of the eligible suitor by making the marriage settlement the great sum of 30,000*l*, and Bridget and Edward were married August 13, 1582.

The bride's lovely young womanhood still appears in her portrait at Holkham Hall, her gentle eyes, her rosy color, her pale blond hair, her snowy neck, in their frame of Elizabethan ruff and tightly laced blue and silver dress. Dear Bridget Paston — she made her husband happy with her amiable temper to smoothe his asperities.

They had been married hardly six months when her father died, and Bridget may well have received further fortune from the estate of the wealthy William Paston, Esq., and Coke may have benefited from some of the excellent law business his father-in-law had enjoyed.

V

COKE rose rapidly in his profession and acquired an extensive practice. Though not wealth, it was an honor when in 1584 the corporation of Ipswich gave him a retainer as counsel, with the yearly fee of five marks. The Norfolk town of Coventry in 1585 elected him Recorder, an office corresponding roughly for the boroughs to that of the county offices, to which the Crown appointed through the Lord Chancellor, of Justices of the Peace, who, besides having a wide variety of not strictly judicial duties, were the primary magistrates, and when formally assembled as a group in quarter sessions, exercised a wide and important jurisdiction. Coke may have

felt some satisfaction in the fact that Sir Thomas Littleton, the olden Inner Templar, who wrote the essay on Tenures, had been Recorder of Coventry in 1450, when, as representing the Mayor and Corporation, he presented Henry VI, on his visit to the city, September 21, with a tun of wine and twenty fat oxen, for which, and for his 'good rule of the citizens,' his King had thanked him. The larger town of Norwich in 1587 elected Coke Recorder. In 1590 the Benchers of the Inner Temple chose him one of their number, an honor that came to him unusually early, for he was then only twelve years at the Bar.

Two years later, 1592, they appointed him Reader for the Inn. He chose as the statute for discussion 17 Ed. VI, St. 1, ch. 1, title Fines, the Statute of Uses, and prepared his lectures with meticulous care. After he had delivered five, however, the plague broke out in London, and he decided to leave for the house which, perhaps as part of the Paston fortune, he had at Huntingfield, Suffolk. To show the honor and esteem in which his fellows at the Temple held him, nine Benchers, forty barristers, and others of the Inn accompanied him a considerable distance on his journey. Also, in the same year, 1592, of his Readership, the City of London chose him Recorder, a highly responsible position that often led to even more important legal honors. The charters of London required that the person elected should be a grave and learned lawyer, skillful in the customs of the City. In that office he was the chief assistant to the Lord Mayor, attended to all the legal work of the corporation; and by reason of his position he took precedence in Court over all persons who had not been Mayor.

It is apparent that by this time he had become well known to the powerful government group of the last of the Tudors, and that they regarded him with great favor; for in the same year, 1592, Elizabeth appointed him Solicitor-General, and he resigned his London Recordship to take up the duties of the Crown office.

The ordinary daily toil of a lawyer affords little of interest for narration. Coke carried on the work of a highly successful barrister of his day in addition to that of his public offices. He was increasing the wealth he had inherited and acquired

by marriage, and adding to his acres in several counties. Bridget was bearing him children in a quiet domestic life of which there is little record.

Coke lived and worked in a small society of lawyers. In 1574, when he was a student, a government census showed that the total number of barristers actually practicing was only one hundred and seventy-seven. As the reign of Elizabeth went on, the number rapidly increased until it reached three hundred and fifty-two. Burghley had a report made in 1586 which showed a total residence at the Inns of Court in term time of nine hundred and fifty-six, and out of term of four hundred and nine. The Chancery Inns had seven hundred and forty-seven residents in term, and two hundred and thirty-three out of term. The term-time resident membership of the Inner Temple, the Middle Temple, and Lincoln's Inn was an even two hundred each, and of Gray's Inn three hundred and fifty-six. At the Chancery Inns, the term-time residence ranged from forty for Thavies to one hundred and forty-five for Staple Inn. During the reign of James the number of practicing barristers was reduced from the three hundred and fifty-two of the latter part of Elizabeth's reign to two hundred and fifty-nine.

VI

FRANCIS BACON, through with Cambridge at sixteen, had, the year before Coke's call to the Bar, been admitted at Gray's Inn, where Sir Nicholas, his Chancellor father, was an Ancient, as the barristers at Gray's called a member of their governing board. The Chancellor, however, instead of having his son settle down to study law, attached the clever lad to the *entourage* of Sir Amyas Paulet, English Ambassador at Paris; and Francis had a chance to see a bit of Europe as well as something more of the life of Courts.

Sir Nicholas Bacon, in February, 1579, stricken with a sudden illness after falling asleep by a window open during a thaw, died within a few days — died before carrying out an intention of purchasing an estate for his son Francis. So from his journeyings in the English Embassy of Sir Amyas Paulet with the French Court to Blois, Tours, Poitiers, and from his stay in Paris, Francis Bacon turned his back for a time on his

youthful dream of the pursuit of philosophy, and his face towards London and the problem of becoming able to earn a living.

Leaving Paris March 20, 1579, on arriving in England he delivered to Elizabeth dispatches from Paulet, among them a letter commending Francis to the Queen as a young man of great hope, endued with many good and singular parts, who, if God gave him life, would prove a very able and sufficient subject to do Her Highness good and acceptable service. Then he settled down to study law with such diligence that he was admitted utter-barrister somewhat earlier than in the regular course. He stayed on at Gray's Inn, continued to read law, kept in touch with the Court and his uncle Burghley, lived in hope of some political preferment, wrote the first essay of the 'Instauration,' and became member for Melcombe in Dorsetshire in the Parliament of 1584. There is a glimpse of him at this period being taken by his Calvinistic mother Sunday afternoons to attend the sermons of Walter Travers at the Inner Temple Church. In 1586, he reached the Bencher's table of his Inn, and achieved the distinction of Reader; but practice did not come to him as it had to Coke.

Bacon sat in the Parliament of 1586-87 as member for Taunton in Somersetshire. He was member for Liverpool in the Parliament of 1589, and, at the age of twenty-eight, took a considerable part in its affairs. In that year, Burghley procured for him a grant of the reversion of the clerkship of the Court of Star Chamber, an office worth sixteen hundred pounds a year, and performed by deputy; but, hope deferred, the reversion did not fall in for nineteen years.

VII

NORFOLK returned Coke as one of its shire representatives for the Parliament of 1593; and Middlesex returned Bacon. Again the time had come to vote more money for the Queen in the defense of the realm. The destruction of the Armada of 1588 had not ended the menace of the Spaniards. They were building new ships, better suited for an invasion of England than the high galleons which the narrow seas of Britain had smashed. In their war with Henry of Navarre, they had possessed themselves of ports in France from which they



SIR FRANCIS BACON
National Portrait Gallery, London

could menace England. They were intriguing with some of the powerful nobles of Scotland. Since the Armada, England had harried the coasts and islands of Spain with successive expeditions under Drake, Norris, Cumberland, Frobisher, Howard, and Hawkins, and had sent troops to France to aid against the common enemy.

Early in the morning of February 19, 1593, Coke and his fellow commoners gathered in and about the Parliament buildings to await the opening of the session. According to the established ceremony, the long procession of the Court preceded the Queen from her palace at Whitehall to Westminster Abbey, where the Dean and Chapter received her, presented the scepter, and led her to the choir. The Lord Steward went to Parliament House to bring the mace. In the service the Queen alone took communion, then returned her scepter to the Dean, crossed old Palace Yard, and entered the Parliament buildings with the more distinguished members of her escort. After robing, she passed into the Hall in which the Lords had assembled to await her, and proceeded to the seat royal, where she took her place, the Lord Keeper, Sir John Puckering at her right, the Lord Treasurer, Burghley, at her left, and the other high officials ranged about her in their order.

When the Clerk had called the roll of the Lords, the Commons entered, and after the Lord Keeper had declared the reasons for the summons, received permission from Elizabeth to withdraw and elect their Speaker. Then the Queen departed for a time.

In the great room of the Hall of Requests, those of the Privy Councillors who were members of the Commons took the Councillor's oath before the Lord Steward, and in turn administered the oath of supremacy by groups to their fellow Commoners, who then entered their own Hall, the beautiful old Saint Stephen's Chapel, to elect their Speaker.

Sir Francis Knollys, Treasurer of the Household, nominated Edward Coke, Sir Thomas Henage, Vice-Chancellor, seconded, and the House so voted — an election still subject to the approval of the Queen, which, however, since he was in effect her nominee, was not likely to fail. Both Knollys and Henage were Privy Councillors, and their nomination of Coke indi-

cates the selection by the Council and the Queen, as was customary, of a man whom the Commons were expected to elect, an expectation fulfilled as a matter of course.

The appointment of Coke as Solicitor-General had shown him already accepted by, and working in close accord with Lord Burghley, and son Robert Cecil, and the rest of the Council. Though it was a first Parliamentary experience for Coke, he had known that he would have the Speakership, and, in anticipation, had informed himself on the procedure.

When, after a time, Elizabeth returned to her throne in the Lords and sent command to the Commons to attend her again, once more they trooped into the Upper House, and crowded to the bar at its lower end. Several of their number escorted Coke to a place before Elizabeth and presented him as the Speaker-elect. Three times he curtsied, once to the Queen, once to the Lords Spiritual and Temporal, and once to the Commons, and began the customary statement, already made in different form on his nomination in the Commons, of his unworthiness, which even more than most men under similar circumstances he did not in the least feel:

Your Majesty's most loving subjects... have nominated me, Your Grace's poor servant and subject, to be their Speaker. Though their nomination hath hitherto proceeded... yet... their nomination is only a nomination and not election until Your Majesty giveth allowance and approbation. For as in the Heavens a star is but *opacum corpus* until it have received light from the sun, so stand I, *corpus opacum*, a mute body, until your Highness's bright-shining wisdom hath looked upon me and allowed me.... I know myself the meanest and inferior unto all that ever were before me in this place; yet in thankfulness of service and dutifulness of love, I think not myself inferior to any that ever were before me. And amidst my many imperfections, yet this is my comfort: I never knew any in this place but if Your Majesty gave them favor, God, who called them to the place, gave them also the blessing to discharge it.

The astronomy was poor, the metaphor mixed, but the flattery up to the strength Elizabeth was accustomed to and liked. Through the voice of the Lord Keeper she answered:

that she hath well conceived of you since she first heard of you which will appear when her Highness elected you from others to serve herself [i.e., as Solicitor-General]. But by this, your modest,

wise, and well composed speech, you give Her Majesty further occasion to conceive of you above that which ever she thought was in you.

Coke had seemed, though a good lawyer, a poor courtier; but the Queen found that he could turn a flattering phrase as well as another man.

By endeavoring to deject and abase yourself and your deserts, you have discovered and made known your worthiness and sufficiency to discharge the place you are called to, and whereas you count yourself *corpus opacum*, Her Majesty, by the influence of her virtue and wisdom, doth enlighten you, and not only alloweth and approveth you, but much thanketh the Lower House and commendeth their discretion in making so good a choice and electing so fit a man. Wherefore, now, Mr. Speaker, proceed in your office, and go forward to your commendation as you have begun.

Coke curtsied thrice again, as before, and after the prologue of a long eulogy of England's kings, queens, and laws, he ended with the customary petition for the liberties of the Commons:

Now am I to make unto Your Majesty three petitions in the name of the Commons: First, that liberty of speech and freedom from arrest, according to the ancient custom of Parliament, be granted to your subjects; secondly, that we may have access to the royal person, to present those things that shall be considered amongst us; and lastly, that Your Majesty will give your royal assent to the things that are agreed upon.

There was a little stir about the throne — the Queen in animated talk with the Lord Keeper. Though these were the ancient liberties, Elizabeth chose to give a caution, as she had in the preceding Parliament. This time it came imperiously, and the Lord Keeper, turning towards Coke, spoke for Her Majesty:

... To your three demands, the Queen answereth... privilege of speech is granted, but you must know what privilege you have; not to speak every one what he listeth, or what cometh into his brain to utter of it; but your privilege is, Aye or No... to your persons, all privilege is granted, with this caveat, that under color of this privilege, no man's ill-doings or non-performing of duties, be covered and protected. The last, free access, is granted to Her Majesty's presence, so that it be upon urgent and weighty causes, and at times convenient and when Her Majesty may be at leisure from other important causes of the realm.

In these words from the woolsack, the Queen emphatically warned Coke to attend to the real task of a Speaker, which lay in keeping the Commons within a line of speech and action inoffensive to the Crown. Almost immediately, the ungagga-ble Peter Wentworth, who had been sent to the Tower at an earlier Parliament for objecting to Elizabeth's prohibition of discussing the succession, again offended. At a moment when Coke was unable, because of a brief illness, to attend to his duties as watchdog, Peter Wentworth, Sir Henry Bromley, and others, broached the matter which most irritated her and considered proposing a request to the Lords to join in a petition to the Queen to provide for the succession.

The Council promptly called the offending members before it, and sent some of them to the Tower and some to the Fleet. When, not referring to privilege, a proposal was made in the Commons to petition for their release on the ground that their constituents might complain of having to pay taxes to which their representatives had not consented, those of the Privy Councillors who were members of the Commons explained that Her Majesty had committed them for causes best known to herself, and that for the Commons to petition her in their behalf 'would only hinder them whose good they sought.' The House let the matter go at that—one more ambiguous precedent, the ghost of which was to arise before Coke long after when habeas corpus became the theme of Parliament.

Though the illness of Coke might absolve him from responsibility for this ruffling of Elizabeth's feathers, he almost immediately had to meet another difficulty. A member of the House, James Morrice, Master of the Court of Wards, introduced a bill for a reform in the ecclesiastical courts. Coke scented the danger, and, conceiving his plan while the debate was going on, said:

This bill delivered me is long, and it containeth important matters of great weight, and such as cannot be expressed in few words. It hath many parts, and if you put me presently to open it, I cannot so readily understand it and do it as I should. For indeed, it is matter far above my ordinary practice; and to deliver a thing before I conceive it, I could not. Wherefore, if it would please you to give me leave to consider of it, I protest I will be faithful and keep it with all secrecy.



QUEEN ELIZABETH
National Portrait Gallery, London

They entrusted the bill to him, and, a little after the adjournment for the day, a messenger summoned him to the Queen, who, not asking to see the document itself, inquired what were the things in it that were spoken of in the House. Though Coke kept the physical paper with all secrecy, on the request from Her Majesty he disclosed the substance of it, with the result that the next morning he brought the House this message from Elizabeth:

... It was not meant we should meddle with matters of state or in causes ecclesiastical; she wondered that any would be of so high commandment to attempt a thing contrary to that which she hath expressly forbidden... Her Majesty's present charge and express command is that no bill touching the matters of state or reforms in causes ecclesiastical be exhibited.

Coke presented a different view in after years. In 1593, however, Elizabeth promptly sent Morrice to join his fellow members in the Tower, and no one protested. Coke had adroitly, though not ingenuously, performed his function.

On the day before the beginning of the Morrice incident, the debate on the supply had begun. Robert Cecil and others had set forth the dangers overhanging England and the state of the finances, then, on a motion for a committee to consider these dangers and the taxation to meet them, Francis Bacon arose. The Lord Keeper in his opening address had spoken of the multiplicity of the laws and the need of abridging them. Bacon seized on these remarks to add a proposal for the revision of the statutes, as a step in one of his favorite themes of a codification of the law, and also, perhaps, in the thought of saving Parliament from being just a tax-assessing body. The proposal, however, was not carried.

A committee appointed recommended the same supply as the preceding Parliament of 1589 had voted, two subsidies, the largest to that time, in connection with which, probably at the instance of Bacon, then also a member, the Commons had entered on the record that it was not to be taken as a precedent. Only four days after the beginning of the debate on supply, the Lords, expressing some impatience, demanded a conference on the matter, and the Commons appointed a committee. Cecil reported back to the House what his father Burghley had spoken for the Lords: that two subsidies were

not enough, the Crown must have a larger sum and have it paid more rapidly than theretofore; that the Lords would not assent to less than three subsidies payable one each year, a taxation just twice as heavy as that of the preceding Parliament of a half subsidy a year; and that the Lords desired another conference as to what the Commons would do. These terms of Burghley were substantially dictation from the Lords to the Commons in the matter of supply.

Bacon protested that gentlemen would have to sell their plate and farmers their brass pots to meet such heavy taxation. Speaking again, however, he '... yielded to the subsidy, but disliked that this House should join with the Upper House in the granting of it. For the custom and privilege of this House hath always been first to make offer of the subsidy from hence, then to the Upper House ... and reason it is that we stand upon our privilege seeing the burden resteth upon us as the greatest number...' With that he asked that the House act without further conference with the Lords, and, in spite of the efforts of the wily Cecil, the Commons voted, 217 to 128, that it would not confer, and appointed a committee so to notify the Upper House. The Lords answered that the Commons were one House with them, and should have no such scruples as they had expressed. The Lower House was willing to confer on the state of the kingdom and its financial needs, but would not permit its right to determine the amount of the grant to be taken away. The Government had attempted to warp the Constitution.

After a night, in which presumably the leaders conferred, Cecil abandoned the Government's scheme, and the next morning Sir Walter Raleigh moved a new question: 'Whether the House would be pleased to have a general conference with the Lords touching the great and eminent dangers of the realm and state, and the present necessary supplies of treasure to be provided speedily for the same...' This was assented to without a negative vote, and on the 22d of March, the bill for subsidy was passed, but with the preamble, 'That these large and unusual grants which are made to a most excellent princess on a most pressing and extraordinary occasion might not at any time hereafter be drawn into a precedent.'

Bacon had performed for the nation a notable service

which was to cost him dear. That was not the way to favor in the Court of the last of the Tudors. And he had stirred up an uneasy time for Coke, who, helped by his self-confidence and his prestige in the law, had kept the House in order with great dexterity, sometimes preventing an undesired debate or an adverse vote by a subtle wording of the question, and had proved valuable to the Government

On April 10, Parliament came to an end. Elizabeth again ascended her throne in the Lords. Coke, as Speaker of the Commons, for his part in the closing ceremonies made another essay at the language to be used in addressing crowns, and after tracing the history of Parliaments, continued, his entomology as bad as his astronomy had been:

... This sweet council of ours I would compare to that sweet commonwealth of the little bees... the little bees have but one governor whom they all serve... he is placed in the midst of their habitations... they forage abroad seeking honey from every flower to bring to their king... the drones they drive away out of their hives... Your Majesty is that princely governor and noble queen whom we all serve; being protected under the shadow of your wings we live and wish you may ever sit upon your throne over us ... under your happy governor we live upon honey. We suck upon every sweet flower. But where the bee sucketh honey, there also the spider draweth poison. Some such venoms there be. But such drones and door bees we will expel the hive and serve Your Majesty and withstand any enemy that shall assault you. Our lands, our goods, our lives, are prostrate at your feet to be commanded....

Honeyed words!

But 'the spider draweth poison, some such venoms there be.'

The spider — Francis Bacon.

The Speaker continued:

Two laws there are, but I must give the honor where it is due: For they came from the noble lords of the upper house, the most honorable and beneficial laws that could be desired: One a confirmation of all letters patent from Your Majesty's most noble father of all ecclesiastical livings which that king of most renowned memory, your father, took from those superstitious monasteries and priories and translated them to the erecting and setting up of so many funds of cathedral churches and colleges greatly furthering the maintenance and learning of a true religion....

Of course, a discreet refraining to mention the many grants

of such lands her father had made for the private advantage of nobles and favorites.

Answering through the Lord Keeper, Elizabeth, not completely accepting Coke's version of the session, scolded a little, saying:

... In some things they had spent more time than needed... she misliked also that such irreverence was showed towards Privy Councillors who were not to be accounted as common knights and burgesses of the house that are councillors only during Parliament, whereas the other are standing councillors and for their wisdom and great service are equal to the counsel of the state...

and now that Her Majesty had her subsidies, she

would not have the people feared with a report of great dangers, but rather to be encouraged with boldness against the enemies of the state.

When the Lord Keeper had finished his speech, the Queen herself addressed the House. Splendidly she boasted:

... I will compare with any prince that ever you had or shall have...

She berated the King of Spain, and referring to the conduct of some of her subjects during the Armada, she swaggered:

I heard say when he first attempted his last invasion, some upon the sea coasts forsook their Towns and fled up high into the country and left all naked and exposed to his entrance. But I swear unto you, by God, if I knew those persons or may know of any that shall do so hereafter, I will make them know and feel what it is to be fearful in so urgent a cause...

Sir Gilbert Gerard, Master of the Rolls, had died February 4, 1593. The Council recommended Sir Thomas Egerton, Attorney-General, for the vacancy, and Coke for the Attorney-Generalship. But the Queen delayed making any appointment. What influence was at work? 'The spider draweth poison, some such venoms there be.'

VIII

FULLY to explain the influence that delayed the appointment of Coke as Attorney-General, Robert Devereux, Earl of Essex, with whom sometime prior to the Parliament of 1593

Bacon had formed a friendship, must enter the narrative; and since this young Favorite of Elizabeth took a part of much importance in the life of Coke, as well as in that of Bacon, he must appear with an adequate introduction and an indication of the place he held in the times. His father, Walter Devereux, Lord Hereford, for whom Elizabeth had revived the title of Earl of Essex, married Lettice Knollys, daughter of that stout Puritan, Sir Francis Knollys, who nominated Coke for his Speakership of the Commons. Lettice Knollys, however, proved the daughter of her mother, rather than of her father, and her mother was a direct descendant of Thomas Boleyn, Earl of Wiltshire, father of Anne Boleyn. So through her Boleyn maternal ancestry, Lettice was cousin to Queen Elizabeth.

Walter Devereux, first Earl of Essex, young, ardent, and chivalrous, eager with his new earldom to serve his Queen and his country, had hoped to settle Irish affairs through an English colonization, and had, in the summer of 1573, headed a band of well-born young Englishmen and a large English force to occupy their Promised Land. The enterprise collapsed before the year was out. But the Queen kept the Earl at the Sisyphean Irish task along with the more seasoned Sir Henry Sidney.

At the Court, Lettice saw much of Leicester. Though for the Queen, custom had staled his far from infinite variety, yet, since '*on revient toujours à ses premiers amours*,' he was still a Favorite. The first Earl of Essex died in Dublin in September, 1576, three weeks after his return to Ireland from a visit home. Such analytical skill as the Dublin surgeons possessed had detected no trace of poison; however, when people learned that immediately after his death Lettice, his widow, had married Leicester, the death appeared exceedingly convenient. They remembered, too, that Amy Dudley, Leicester's first wife, had been found dead at the foot of a staircase; and there was talk. The new marriage was secret, and under some pressure, it is said, from the Puritan father, Sir Francis Knollys. The Queen did not find it out till 1579, three years later. Then the Duc d'Alençon came, and Elizabeth entered into the marriage contract that cost her so dear in anxiety and money to avoid.

Robert Devereux, son of the marriage of Lettice Knollys and Walter Devereux, born in 1566, was a ten-year-old boy when, by the death of his father, he became the second Earl of Essex. The son came under the guardianship of William Cecil, made Lord Burghley in 1571, who then held the office of Master of the Court of Wards. Debts of the young Earl's father, incurred in the Irish enterprise and service, seriously embarrassed the lad's inheritance. In May, 1577, less than a year after his father's death, the boy Robert went down to Trinity College, Cambridge; two years later, in August, 1579, he matriculated there, and, on July 6, 1581, became Master of Arts. Except for a brief appearance at Court, he lived quietly in the country for several years.

Then the continued volunteer English assistance to the Low Countries in revolt against Spain stirred Philip II to the reprisal, May 26, 1585, of seizing English shipping and imprisoning English crews, and this precipitated the negotiations of Elizabeth with the States-General to a treaty of assistance. Sir Thomas Cecil, Lord Burghley's eldest son, went to Flushing, and Sir Philip Sidney went to Brille as governors of these cautionary towns, held by Elizabeth for the fulfillment of the treaty by the Dutch. Leicester went pompously in command of the English forces, and, under his stepfather, with the horse went young Robert, Earl of Essex, to ride gallantly, September 22, 1586, in the unavailing brave charge at Zutphen in which his friend, Sir Philip Sidney, fell, and left his wife, Frances Sidney, daughter of Sir Francis Walsingham, a widow.

In November, 1586, Leicester returned to England to face Elizabeth, angry that, in his fondness for importance, he had accepted the governorship to the States-General, contrary to her instructions, angry that matters had not gone better in the Low Countries, where she followed the usual Elizabethan policy of letting her troops starve. He returned to find a new Favorite, Sir Walter Raleigh, making progress, and bethought him that the fresh young face and form of a gallant lad, over whom, as husband of the lad's mother, he had influence, might divert the Queen and serve as a fair breeze to blow his barque into less troubled waters. So he brought the twenty-one-year-old Robert, Earl of Essex, to Court.

The experiment proved successful. The charming youth of



THE EARL OF ESSEX
National Portrait Gallery, London

Essex and a never altogether lost fondness for her eldering Sweet Robin brought emollient to the lonely heart of Elizabeth. In spite of a further display by Leicester of incapacity in the Low Countries, she, in July, 1588, when the Armada threatened, appointed him in command of the land levies for defense, with him reviewed the forces at Tilbury, and meditated making him Lieutenant-General of England and Ireland, when in this flare of glory he died. And the twice widowed Lettice married Sir Christopher Blunt.

Robert, Earl of Essex, with the Queen at Tilbury, the charge at Zutphen still tingling in his veins, tugged unavailingly at the apron strings, to which Elizabeth already had him tied, for leave to go with the fleet where there would first be fighting. After those brave August days, when the English ships under Sir Francis Drake and Lord Howard of Effingham harried the Spanish galleons, after those days when the winds whipped the seas to strew the coasts with Spanish wreckage, *nunc dimittis*, Sir Francis Walsingham died.

For all the salvation he had seen, he died in bitter sadness. He had gone surety for the debts of Sir Henry Sidney, incurred for the Queen's benefit in Ireland, and, through a defective legal instrument, the plans Sir Henry's son Philip had made to provide for the situation went astray on Philip Sidney's death after Zutphen. The demands of the Sidney creditors on Walsingham ruined him. He had uncovered the Babington conspiracy against the Queen's life, implicating Mary Stuart and leading to her conviction and execution; and, since the debts on which he had gone surety were for moneys expended in the service of Elizabeth, Lord Burghley tried to induce her to aid Walsingham, but the Queen gave the confiscated Babington estates to Sir Walter Raleigh. Still Walsingham served her until his death, so poor that his body was buried at night to save the cost of an expensive funeral.

And Robert, Earl of Essex, whose estate we have seen was, like that of the Sidneys, embarrassed for moneys spent in the Irish service, then married Frances, the daughter of Walsingham and widow of his friend, Sir Philip Sidney, a marriage that the Queen soon discovered. Next, the lad tried to right another wrong the Queen had done. William Davison, who had been joined with Walsingham to carry on the arduous

duties of Secretary of State, had taken to the Council the warrant Elizabeth had at last reluctantly signed for the execution of Mary, Queen of Scots, following her trial at Fotheringay in October, 1586. After the last dramatic scene that ended a life of drama on February 18, 1587, the Queen of England sought a scapegoat, and sacrificed Davison, who was found guilty of exceeding his instructions in having laid the matter before the Council. Though the trial commission recommended that, in view of his good faith, the penalty be remitted, Elizabeth deprived him of office and enforced a fine so heavy that it ruined him. Since, with the death of Walsingham, the office of Secretary of State became entirely vacant, and an appointment presumably must be made, the young Essex endeavored to persuade the Queen to reinstate Davison.

Elizabeth had an almost adamant egotism, and an article of her real religion, far more important to her than any of the thirty-nine her Lambeth Council of Bishops had adopted, was a faith in the divinity that doth hedge a king — or a queen. Though the case against Mary Stuart was ample, though the Council had pressed Elizabeth to consent to the trial and to sign the warrant for the execution, and so far relieved her of responsibility, nevertheless, since Mary had been a queen, these acts evoked a sense akin to abhorrence in the soul of Elizabeth; and besides the political capital foreign sovereigns might make of the deed, her own conscience troubling her for a betrayal of the divine nature of royalty, she shrank from an accusation by her fellow monarchs of such betrayal, and clung to the absolving potency of her scapegoat sacrifice.

Though the Queen would not reinstate Davison, the engaging youth of Essex shackled her heart to him as to a son she might have had, and ever loath to disappoint him, and possibly to delay doing so on this occasion, she made no appointment at all. And this delay introduces another man already close to the life of Coke. William Cecil, Lord Burghley, the Treasurer, and, before coming to that office, Secretary of State, had, by his second wife, Mildred Cooke, a son Robert, a sapling sprouted from the old oak, about two years younger than his cousin Francis Bacon. Somewhat deformed by a slight curvature of the spine, Robert Cecil received his education from private tutors, and grew up to a stature below mid-

dle height, with a sensitiveness to his deformity irritated by the inconsiderate speech of the times. The letter-writing Chamberlain some time later informed a correspondent that Francis Bacon 'hath set out new essays where in a chapter of Deformity, the world takes notice that he paints out his little cousin to the life.' And if Chamberlain and the world took notice, one may be sure the little cousin noticed also, and that the essay cruelly hurt.

Hard-working Burghley early brought his astute and ready son Robert to the task, and, on the removal of Davison, Robert Cecil, without appointment, but as assistant to his father, carried on the work that Davison had done, and when Walsingham died, carried with his father the entire burden of the Secretaryship. Since the reappointment of Davison would have left open but a virtual assistantship for Burghley's son, the Cecils could hardly fail to resent the interference of Essex, and Burghley was actively pushing Robert for the Secretaryship. He had married Elizabeth, daughter of William Brooke, Lord Cobham, Warden of the Cinque Ports, Constable of the Town, and successor to Lord Hunsdon as Lord Chamberlain of the Queen's household. The story of the Parliament of 1593 has already shown this partnership of father and son working together in the affairs of government. Robert Cecil, knighted May 15, 1591, became a member of the Privy Council in August of that year. The Queen made Essex a member February 25, 1592.

Essex had gone down to Trinity College, Cambridge, just after Bacon left. Even if they had overlapped, there would have been nothing in common between the ten-year-old Robert Devereux and the fifteen- or sixteen-year-old Francis Bacon; but later, in London, they became friends. Essex — whose warm friendship with Philip Sidney, with Spenser, with Shakespeare's patron, the Earl of Southampton, discloses one side of his nature — perceived the power that lay in Bacon's mind, and his eager interest in ideas responded to Bacon's philosophical speculations.

The sophistication of the older man seemed wisdom to the younger, who, in some measure, adopted Bacon as friend and guide. The quality of that worldly wisdom may be tasted in the reiterated advice to the effect that Essex should stay close

to Court, and not go knight-errantly soldiering, which, as worldly wisdom, was sound enough; but its elaboration with more specific Baconian policy, such as that he should ask for things he did not really want, in order to gain sympathy for losing them and favor for gracefully yielding, gave mean advice, of which Essex, temperamentally the frankest of souls, was ill-suited to take advantage.

Even the fundamental worldly wisdom Essex did not follow. He yearned for action, yearned for achievement, yearned also, not so well, for the reward of glory. He strained at the apron strings. Though with his easy ascendancy in the heart of Elizabeth he became much of the spoiled boy, underneath the spoiling was a real desire to do and to prove to himself that he was something more than a courtier sucking advantage out of the egg of royal fondness.

To achieve the distinction of Master of the Horse and lead Elizabeth's palfrey in the Armada triumphal procession did not satisfy him, even though the leading led to royal grants of land and of monopolies to the lad, who, when his fortunes needed mending, had known no better than marry the daughter of the ruined Walsingham and thereby stir the Queen to anger because he had married at all and because he had married without advantage. On April 3, 1589, Essex literally ran away from Court and in two days rode two hundred and twenty miles to Plymouth to join the Portugal expedition. Elizabeth at once dispatched Sir Francis Knollys after him, but his grandfather could not overcome the start and speed of the eager youngster, who reached the fleet already at sea and stayed with it.

On the return of the expedition, Essex soothed the hurt, charmed away the wrath of the Queen, and wheedled her into letting him lead the Normandy expedition of 1591 in aid of Henry of Navarre, in whom Essex found a somewhat kindred soul. But Elizabeth finally got her lad back in 1592. His frequent disobedience wounded and angered her, his reckless knight-errantry alarmed her, but he was of metal different from Leicester, different from Sir Christopher Hatton, though kindred to Raleigh in brave enterprise, and if he had been other than he was the personally fearless Queen would not have loved him so well.

Back at Court he threw himself into a new activity, that of foreign affairs. Here Anthony Bacon, brother of Francis, came in. Anthony, hoping for a diplomatic career, on leaving Trinity at the same time as Francis, had gone abroad and stayed there for ten years at his own expense to the serious detriment of his affairs, and during that time had furnished foreign information to Burghley. On his return to England, disappointed in hopes of immediate governmental employment, he turned towards the unofficial meddling of Essex in the foreign field. In this connection Anthony wrote to the Earl of Devonshire:

On the one side, coming over I found nothing but fair words, which make fools fain, and yet even in those no offer, or hopeful assurance of real kindness, which I thought I might justly expect of the lord treasurer's hands, who had inned my ten years harvest into his own barn, without any half penny charge. And on the other side, having understood the Earl of Essex's rare virtues and perfection, and the interest he had worthily in my sovereign's favor, together with his special noble kindness to my germain brother, whereby he was no less bound and in deep arrearages to the Earl, than I knew myself to be free and beforehand with my lord treasurer; I did extremely long to meet with some opportunity to make the honorable earl know how much I honored and esteemed his excellent gifts, and how earnestly I desired to deserve his good opinion and love, and to acknowledge thankfully my brother's debt, presuming always that my lord treasurer would not only not dislike, but commend and further this my honest desire and purpose.

Anthony entered the service of Essex, and the Earl, with the skill and experience of his new retainer to aid him, launched into his private competition with the governmental activities of Burghley and Robert Cecil in gathering foreign information for the Queen's service; and as Elizabeth began to take up foreign matters somewhat with Essex, the situation vexed the Cecils sorely. Since the Earl lived in London in the mansion which, when Coke first came to study law, had been Exeter House, or the 'Outer Temple,' that part of the Templars' property which had not gone to the lawyers, whenever Coke left his chambers at the Inner Temple to turn a landward way towards Westminster Hall, he saw the retainers of the restless Essex in their dull orange liveries flitting in and out of Essex House like tawny bees.

IX

FRANCIS BACON had marked the vacancy in the office of Attorney-General, for which the Council had recommended Coke to the Queen, and sought it for himself through the influence of Essex, who whole-heartedly entered into the interest of his friend. The Queen liked to hear the Earl plead, loved the generous ardency of the young man, then twenty-seven, whom Henry Wotton described as tall, able-bodied, stooping a little, hands delicate; and she was ever reluctant to disappoint him; but in this instance he encountered the real wisdom of the sound judgment she had in choosing the men to carry on the actual work of government. He talked with the Queen on behalf of Bacon at various times about the appointment, and she had delayed, but finally named a day when she would come to a decision; and on the day, though ill, Essex went to speak for Bacon again.

The Cecils seem to have been ready to do what they could without too great difficulty for their philosopher kinsman. But Burghley seldom applied for, and then almost never got, any personal favor of patronage, and needed to husband such influence of this kind as he had in favor of his son Robert, for whom he had determined to secure, if possible, the high office of Secretary of State. Coke by his Parliamentary service had earned the Attorney-Generalship. His promotion from Solicitor-General was in the usual, though not invariable, order; but on the vacancy in the lower post the Cecils might be able to do something towards the satisfaction of Bacon and his hovering mother. Indeed, the suggestion of Bacon for the Solicitorship had already been made to the Queen. His ambition, fortified by his knowledge of the influence of Essex, aimed, however, at the higher position.

Essex, in his audiences with the Queen, pleaded earnestly for Bacon. We have the narrative in a letter reporting his conferences to Anthony Bacon, which Essex wrote from his sick bed to give assurance of his interest and activity. Elizabeth questioned his judgment, and told him that his uncle, Lord Hunsdon, had commended Bacon only for the Solicitor-Generalship. She said that the sole objection against Coke, who was then forty-one, of his lack of years for the position, weighed more heavily against Bacon.

Essex, not directly prevaricating, but seizing on facts that were to his purpose and omitting those against it, said that 'Mr. Bacon was the ancient in standing by three or four years,' presumably referring to the fact that though Coke had been called to the Bar in 1578, before Bacon had settled down to study law at Gray's Inn in 1579, Bacon had been a Reader in 1586, and Coke not till 1592; and Bacon had been called to be an Ancient of Gray's in 1586, and Coke had not been called to be a Bencher of the Inner Temple till 1590. Essex told the Queen that she 'herself knew there was such a difference in the worthiness of the two persons as if Mr. Coke's head and beard were grown gray with age it would not counterpoise his other disadvantages.'

These other disadvantages were apparently Coke's manner, for referring to Lord Hunsdon's advocacy of Coke, Essex pilloried his uncle as paradoxical, saying that 'it was rather the humor of my lord to have a man obnoxious to him.' Though Essex argued and wheedled and 'moved the Queen somewhat,' she would nevertheless then have gone through with the appointment of Coke, if Essex had not induced her to delay to hear him once more, for which she named another day.

On the day set, Essex 'found her stiff in her opinion that she would have her own way.' 'Thereupon,' Essex reported, 'I grew more earnest than ever I did before, in so much as she told me she would be advised by those that had more judgment in these things than myself. I replied so she might be, and yet it would be more for her service to hear me than to hear them; for my speech had truth and zeal to her without respect of private ends.' The dear boy — the Queen had then for thirty-five years, day after day, listened to protestations of disinterestedness from those who wanted to get something. He came closer with the submissive, 'If I failed in judgment to discern between the worth of one man and another, she would teach it me'; (the dear, dear boy!) but he said he was not alone in his opinion of Bacon, and 'it was not an ill rule to hold him an honest and wise man, whom many wise and honest men hold in reputation.'

She roused at his next point that 'those whom she trusted did leave out the wisest and the worthiest, and did praise for affection. Whereupon she bade me name any man of worth

whom she had not named'; that is, appointed to office. Essex spoke of the unrewarded merits of Mr. Morrice, Attorney of the Court of Wards, and the man whose introduction in the recent Parliament of the bill to reform the ecclesiastical courts had roused the ire of Elizabeth and brought about his commitment to the custody of the Chancellor of the Exchequer. The young Earl had a way of picking up lost causes.

In response to the mention of Morrice, the Queen acknowledged his abilities, 'but said his speaking against her in such manner as he had done should be a bar against any preferment at her hands.' Then suspicion entered her mind for a moment. Why had her Councillors failed to recommend a man so well qualified for advancement? Did they act for her to the best of their abilities, or would they lead her astray for their own ends? This man Morrice? Essex said, 'she seemed to marvel' that in their recommendations 'they had never thought of him.' Her Councillors, some of whom had served her for thirty-five years, and knew their Elizabeth well in her cherishing of angers, knew that to run counter to them was but to stir resentment against themselves, and knew the expediency of the way of avoidance if possible.

Essex hit here the greatest obstacle to his own immediate cause, and, had he been more astute, would have realized its extreme difficulty from the remark by the Queen that the conduct of Morrice should be a bar against any preferment of him at her hands. For, close as her ecclesiastical policy was to her will, the matter of the subsidies in which Bacon had created so much difficulty was more vitally important. Essex, however, had caught her pause of momentary mental questioning the integrity of her Councillors, had followed it up by saying that though he 'was a stranger to the law, and to almost all that professed it,' yet he 'was persuaded there were many unspoken of more worthy than those that were commended' in the recommendations, and hope sprang that 'this last stratagem' had stemmed the tide of those who just before him had conferred with the Queen on behalf of Coke, whose cause, the Earl wrote, 'hath been as violently urged that day as ever was anything.'

It must be credited to Bacon that, although he soon saw how serious an error he had fallen into from the viewpoint of

his advancement, he never withdrew from or apologized for his position in the matter of the subsidies, but took the stand, both with Burghley and with the Queen, that he had acted from conscience, and should not be called in question for what he had said in the House of Commons. But such a position did not accord in the least with Elizabeth's theory of government, and could not possibly penetrate the offended egotism of the Queen; and Essex, who became aware of the obstacle of his candidate's subsidy speech, hardly helped by telling her that she ought to think the better of Bacon for it.

One of the aspersions flung in the face of Bacon's seeking the office of Attorney-General, besides his relatively youthful thirty-two as against Coke's maturer forty-one, was Bacon's relatively even greater inexperience at the Bar, for, whatever other practice Bacon had pursued, he had not yet reached the distinctions of ever pleading a case at Westminster Hall. This last taunt was soon to have its sting withdrawn; and it looks as if in addition to pleading the cause of Bacon at the royal court, Essex bestirred himself to remove the damaging fact of his candidate's brieflessness by providing Bacon with a case; for on January 24, 1594, Bacon appeared in Westminster Hall on behalf of the claim of Sir Thomas Perrot, who had married a sister of Essex, that he was heir of the deceased Lord Cheyney.

Bacon handled the matter well, as Essex promptly reported at Court. The Earl's reputation for sagacity had just enjoyed the lift given by his ferreting out what then was believed, however much historical research has disproved, a Spanish intrigue to poison the Queen through Roderigo Lopez, one of her physicians. Elizabeth told her helpful young man 'that she had been straightly urged to the nomination of Coke to be her Attorney-General, and of Sir Robert Cecil and Sir Edward Stafford to be her Secretaries, and two other officers of her household, and all these to be placed on Candlemas Day [1594] or the Sunday following at the furthest.'

With the Lopez feather in his cap and the fame of Bacon's good court appearance as new argument, Essex had the ready hope of youth for his friend. At seven o'clock one morning, the Earl and Sir Robert Cecil examined Dr. Lopez in the Tower. London had already changed somewhat since Coke

came riding down to study law, when the Queen had almost the only coach in England, a strange monster brought from Holland that amazed both horse and man, in which coachman William Booner drove Her Majesty. Coaches remained a novelty till the end of the eighties of the sixteenth century, but in the nineties these heavy-wheeled, springless, liver-jolting luxuries became more common, and a coach awaited the inquisitors at the Tower. As they were bounced through the City back to the Strand, Sir Robert brought up the matter of the Attorney-Generalship. We have the conversation as Essex told it to Mr. Standen, one of his retainers, who, February 3, 1594, wrote it to Anthony Bacon.

Cecil began, 'My Lord, the Queen has resolved, e'er five days pass, without any farther delay to make an Attorney-General. I pray your Lordship will let me know whom you will favor.'

Essex answered that 'he wondered Sir Robert should ask him that question, seeing it could not be unknown to him that resolutely against all whosoever he stood for Francis Bacon.'

"Good Lord!" replied Sir Robert, "I wonder Your Lordship should go about to spend your strength in so unlikely or impossible a matter," desiring His Lordship to allege him one precedent of so raw a youth to that place of such moment.'

'The Earl, very cunningly working upon him,' as Anthony's correspondent wrote, 'said, that for the Attorneyship, which was but an ordinary office other than the prince's favor, he could produce no pattern, because he had not made any search for that purpose; but that a younger than Francis Bacon, of less learning, and no greater experience, was suing and shoving with all force for an office of far greater importance, greater charge and greater weight than the Attorneyship. Such an one the Earl said he could name to him.

'Sir Robert's answer was, that he well knew that his Lordship meant him; and that admitting that both his years and experience were small, yet weighing the school which he studied in, and the great wisdom and experience of his schoolmaster, and the pains and observations he daily passed in that school, he thought his forces and wisdom to be sufficient to sway that machine; alleging withal his father's deserts in these his long painful travails of so long an administration to merit

a mark of gratitude from Her Majesty in the person of his son. And with regard to the affair of Mr. Francis Bacon, he desired his Lordship to consider it. "If at least," said he, "your Lordship had spoken of the Solicitorship, that might be of easier digestion to Her Majesty."

'The Earl upon this answered, "Digest me no digestions; for the Attorneyship for Francis is that I must have; and in that will I spend all my power, might, authority and amity, and with tooth and nail defend and procure the same for him against whomsoever; and that whosoever getteth this office out of my hands for any other, before he have it, it shall cost him the coming by. And this be you assured of, Sir Robert, for now I do fully declare myself. And for my own part, Sir Robert, I think strange both my Lord Treasurer and you, that can have the mind to seek the preference of a stranger before so near a kinsman. For if you weigh in the balance the parts every way of his competitor and him, only excepting five poor years of admitting to a House of Court before Francis, you shall find in all other respects whatsoever no comparison between them.'"

With that last jolt the coach dropped the Earl at Essex House and took Sir Robert on to Cecil House. Later Mr. Standen was directed by Essex to go to Gray's Inn and tell Mr. Francis Bacon that he would come himself after an hour's conference with the Lord Treasurer. So the Earl came to Gray's, spent a half-hour telling the coach conversation to Bacon, and left him, Standen wrote to Anthony, 'extremely joyful and comforted that his Lordship had so stoutly stuck to him, and so declared himself for him against Monsieur le Bossu,' as, among themselves, they called Robert Cecil, in allusion to his crooked shoulder. Their pet name for Coke was the 'Huddler,' whether a reference by these *cognoscenti* to the literary style of Coke, or to his methods of seeking his advantage, which have remained far more nearly secret to posterity than those of Bacon, one does not know. It was not Coke's figure, which was upright, or Coke's bearing, which was brisk.

The Baconian coterie kept close watch on the Huddler's faction, as may be seen from a letter Francis Bacon had written, November 8, 1593, to Essex, warning him to be cautious with some one, probably the Lord Keeper Puckering, because

Bacon had heard that the suspected man was 'working for the Huddler underhand,' and is 'a man likely to trust so much to his art and finesse (as he that is an excellent wherryman, who, you know, looketh towards the Bridge when he pulleth towards Westminster), that he will hope to serve his turn and yet preserve your Lordship's good opinion. This I write to the end that if your Lordship will see nothing to the contrary, you may assure him more or trust him less; and chiefly, that your Lordship may be pleased to sound again, whether they have not amongst them drawn out the nail which your Lordship had driven in for the negative of the Huddler; which, if they have, it will be necessary for your Lordship to iterate more forcibly your former reasons, whereof there is such copia, as I think you may use all the places of logic against his placing.'

Though the Queen did not make the appointment on Candlemas Day, or on the Sunday after, still, all's too much for loyal Essex, who had taken up one more lost cause, which the obnoxiousness to the Queen of Bacon's conduct on the subsidies rendered hopeless from the start, even if otherwise Bacon had a chance for preference; and on April 10, 1594, just a year to the day from the ending of the Parliament of which Coke had been Speaker, the patents were signed, sealed, and delivered, making Master of the Rolls the man who had been Attorney-General for less than two years, the punctual Sir Thomas Egerton, and making Edward Coke Attorney-General.

Weight had won in the collision; but Sir Robert Cecil was not then designated Secretary. He had to continue rendering the service without receiving the glory. Had Essex driven in another nail? The Queen made her working men sweat for their honors.

Essex advocated the appointment of his friend, really believing that Bacon was not only the better man, all his great abilities considered, but even the better man for the particular position. He saw Bacon's natural talent and underrated the value of Coke's experience. The Earl embarked on his own enterprises in the knowledge of his own spirit and will, and felt bewildered at their complete or comparative failure. How could failure come from so good intent, such earnestness and energy? He was too young to see whether accomplishment

were feasible or not, too young to realize the importance of practice; and the endurance of hammering had not toughened the metal in him.

Though the possibility of the Solicitorship, vacant on Coke's rising to the higher post, seemed to remain to Bacon, yet, in so far as he and his friends hoped for the lower position, they failed to reckon how long the resentments of the Queen endured, unless her affections were warmly involved, especially if no apologies paved the way to abject seeking of favor. That unlucky stand on the subsidies, notwithstanding what otherwise had been her apparent personal liking for Bacon, still barred the way. At some time, just when is not clear, whether before or after the Parliamentary mistake, she, without formal appointment by patent, in fact began employing him as Queen's Counsel Learned in the Law, which then meant an actual member of the Crown legal staff, lesser than the Solicitor-General, an appointment carrying a merely nominal compensation.

Much as Coke might have enjoyed abusing Bacon in the subordinate post, nevertheless, since the new Attorney-General had no more magnanimity in his make-up than his royal mistress, and liked hitting hard, he very likely opposed the appointment of Bacon to the Solicitorship, and doubtless found satisfaction in the thought that his upstart rival did not get even the lower position; and with that consolation for added labor, gladly carried the Solicitor's work along with that of the Attorneyship for two and a half years, until Elizabeth, November 16, 1595, appointed Thomas Fleming Solicitor-General, though, besides Essex, no less than Burghley, Sir Fulke Greville, and Egerton had spoken to her on behalf of Bacon.

When the final filling of the lower post put an unmistakable end to any hopes of royal favor remaining to Bacon and his friends, Essex, who felt chagrined at his failure to achieve the impossible in the matter of the Attorney-Generalship, and as if he owed something to compensate for his failure, wanted to see his friend relieved from what Bacon felt were his necessities. Francis had been borrowing from Anthony, who had been using capital to carry himself. When the matter of the Attorney-Generalship finally went awry, Essex gave to Fran-

cis Bacon some landed property, from which the income should have been sufficient to support him well enough, and leave him free to pursue law, or politics, or philosophy, as he chose.

For example, in 1587, Thomas Wotton, father of Henry Wotton, who came into the service of Essex, had left Henry and each of his other younger sons a rent charge of one hundred marks (66 2/3*l.*) a year, as an adequate provision; and at that time forty marks a year was considered a sufficient allowance for a gentleman of no extravagant tastes. Bacon, however, had a taste for spending, and it was characteristic of him that later he sold the gift of Essex, on which he realized eight-hundred pounds, and he thought he sold it cheap.

At this time Coke had an opportunity to perform a fraternal service. In the Parliament of Benchers of the Inner Temple, held October 13, 1594, he moved the admission, on paying only twenty shillings fine, of Mr. John Bosanne, his half-brother, son of his mother who had died some twenty-four years before.

X

ESSEX continued at the Court until the spring of 1596, when he left to take joint command with Lord William Howard of Effingham of the Cadiz expedition outfitting at Plymouth on a favorite Elizabethan plan of making war by charter of joint adventure. The English captured Cadiz and plundered the city, behaving honorably and with restraint, as sackings went. Charged by the Queen to keep Essex out of danger as much as possible, Lord William Howard would not let him lead the attack, an honor that went to Raleigh and Lord Thomas Howard; but if the Earl could not be the first to land, he made the gesture of being the last to embark on the withdrawal after the exploit.

It was a glorious victory to the English commonalty, and its heart warmed to the already popular young Essex; but the leaders entered into a rivalry for the division of the glory, and with respect to the spoils, the Queen sat in her parlor counting out her money, an occupation that frequently made her peevish, and on this occasion put her in a censorious mood, for the expedition would not only not bring her the profits she had hoped from first reports, but would even cost her something; so she found fault with everybody, including Essex.



SIR THOMAS FLEMING
National Portrait Gallery, London

While the Earl was away on the Cadiz expedition in the summer of 1596, Sir Robert Cecil at last got his appointment as Secretary of State. He turned in friendly fashion to Essex, against whom the Queen could not long cherish resentment. Sir Robert and the Earl had Raleigh to dine with them, and accomplished the perhaps not difficult task of his restoration to the royal favor, which for a time had been denied him; and Cecil persuading the Queen to admit Bacon back at Court, she was at Christmas especially gracious to him. All daggers were sheathed, however loosely and however near the hand they might be kept. When, however, on the death of William Brooke, Lord Cobham, in April, 1597, Essex failed in his endeavor to succeed Cobham in the Wardenship of the Cinque Ports, and the Queen appointed Henry Brooke, the new Lord Cobham, Robert Cecil's brother-in-law, to the office, the old feud had a fresh animus.

Elizabeth placed Essex in command of the Islands Voyage of 1597, without his usual urgent teasing, indeed, apparently without any solicitation, and this time in nominal sole command, though she surrounded him with six councillors, Raleigh among them, whose advice he was bound to take. While Essex was at the coast pressing preparations for the expedition, Bacon appealed to him again for help, this time in an affair of, shall one say the heart? It may be so; at least, of a possible marriage that would mend his means, still far from adequate to his desires.

To tell a little about the lady before she enters the scene, this narration will turn back in its chronology. In 1597, the forty-fifth year of the life of Coke, at which it has arrived, Lord Burghley was the toil-worn Elder Statesman. But he, too, had once been young, and in 1535 had entered Saint John's College, Cambridge, where then there was no Trinity, and became a warmly interested student of Greek under the great classical scholar John Cheke. Roger Ascham was also at that time a Fellow of Saint John's. Under these influences, the elder Cecil came into the enjoyment of learning that he did not lose through a lifetime of the cares of state and the politics of the Elizabethan Court.

At Cambridge he also found a love more warmly human than even a love of the humanities, for he met and wooed

Cheke's sister Mary, who lived with her widowed mother, keeper of a wineshop since the loss of the support of her husband, gentleman-beadle of the University. Cecil's father heard of his son's wooing so far beneath the paternal position of High Sheriff of Rutlandshire, and taking the young man out of the University, in 1541, entered him at Gray's Inn. Cecil, however, did not give up the girl he cared for, but married her within two months of the enforced parting, and their son Thomas was born in Cambridge in 1542. Less than two years later, the young wife and mother died.

Thomas Cecil grew up through a wayward youth that caused his father anxiety, showed no great ability, and in 1564 married Dorothy, daughter and co-heiress of John, Lord Latimer. Among their many children, they had a daughter Elizabeth.

The story must here revert to another of the Elders of the Elizabethan Court, Sir Christopher Hatton, whom Elizabeth made Chancellor in 1587. He did not displease the Queen as her other favorites had done, by marriage, with its implication that the royal person, so dazzling, did not completely blind to other charms, but died a bachelor in 1591, after settling his estate in tail male on his nephew, Sir William Newport, who took the name of Hatton. This William Hatton married Sir Thomas Cecil's daughter Elizabeth. They had a daughter who died in infancy, and Sir William Hatton, dying March 12, 1597, left Lady Hatton a widow at twenty.

Since in the sixteenth century, life never said *festina lente*, whom she would now marry became a topic of great interest in society, which thought it saw in the noted Sir Fulke Greville, the favored suitor. Bacon, in his Cecil connection, had undoubtedly known the lady from her childhood. He wrote to Essex, '... my suit to your Lordship is for several letters to be left with me dormant to the gentlewoman and either of her parents; wherein I do not doubt but as the beams of your favor have often dissolved the coolness of my fortune, so in this argument, your Lordship will do the like with your pen.'

Essex on the day the fleet for the Islands Voyage came to anchor in the Downs, June 25, 1597, wrote from Sandwich, not, indeed, addressing the lady herself, which may indicate that he thought a wooer would not improve his chances by a

third-party application on his behalf, but a letter to each parent, both of like tenor. The one addressed to her father follows:

SIR —

I write this letter from the seaside ready to go abroad, and leave it with my secretary to be delivered by him to you, whenever he shall know that my dear and worthy friend, Mr. Francis Bacon, is a suitor to my lady Hatton, your daughter. What his virtues and excellent parts are you are not ignorant. What advantages you may give both to yourself and to your House by having a son-in-law so qualified and so likely to rise in his profession, you may easily judge. Therefore to warrant my moving of you to incline favorably to his suit, I will only add this, that if she were my sister or daughter, I would protest I would as confidently resolve myself to father it, as now I persuade you. And though my love to him be exceedingly great, yet, in my judgment, nothing partial; for he that knows him so well as I do, cannot but be so affected. In this farewell of mine, I pray you receive the kindest wishes of

Your most affectionate and assured friend

ESSEX

SANDWICH *this 24th June (1597)*

Whether Bacon ever presented these letters that were left 'dormant,' whether he pressed his suit and was rejected, is not known; but certainly Essex spoke him fair. There will be much more of the lady.

XI

COKE's wife, Bridget Paston, died June 27, 1598.

She had borne him three daughters and seven sons in the sixteen years of their marriage. Their first daughter, whom they named Elizabeth, died young. The two other daughters, Anne and Bridget, will have brief further mention in this narrative. Edward, the first son, died in infancy. Their second son, Robert, grew up and married Theophilia, only daughter of Thomas, Lord Berkeley. Arthur, the third son, in due time married Elizabeth, daughter and heir of Sir George Walgrave, of Mileham, the Norfolk birthplace of Coke. Records of the Inner Temple show that at a Parliament of the Benchers of the Inn, held June 22, 1606, Coke moved for special admissions for his sons Robert and Arthur.

The fourth son, John, married the daughter of Anthony Wheatley, son of William Wheatley, Prothonotary of the

Court of Common Pleas. He came into the possession of Holkham, which devolved upon his youngest son, John, who died unmarried, whereupon the Holkham estate came to the fifth son of Coke and Bridget Paston, Henry. Clement, the sixth son, will enter these pages several times again. He married Sarah, daughter and co-heiress of Alexander Redich, Esq., of Redich, Lancaster. Again the Inner Temple records show that at a Parliament of the Benchers held February 11, 1610, the father moved for special admission to the Inn for John, Henry, and Clement. Though these sons of Coke and Bridget Paston lived honorably on the ancestral acres, which some augmented, by marriage at least, since they did little to enhance the ancestral name, and little of incident in the life of Coke is known of them, their tale is told here in this summary fashion.

The body of Bridget Paston was buried in the church of the parish of Tittleshal, where Coke was born. With her death, much of gladness died for him. He afterwards spoke of those years of his marriage with her, the years of his rising reputation at the Bar, as the happiest of his life.

However genuine his grief, the practical Coke lived in a time that was too practical to cherish ideals of eternal fidelity; and fond memories were not the stuff to interfere with desire or advantage. He could no more than have returned from placing the body of sweet Bridget in the peaceful little church of the Norfolk countryside, before he began to take thought for a new marriage.

It was natural that he should think of the young widow whom Bacon had begun to woo at least to the extent that has been shown. The contest of these rivals for the Attorney-Generalship clearly indicates Coke, in close association with the Cecils, in a position to have such advantages as he presented for a family connection fully recognized. They would be aware of the value of his wealth, of the brilliant position he held at the Bar, of the probability of even greater political honors for him. For Coke, she would give the important Cecil family alliance, and would come far from portionless.

The lady of his choice had also the practical turn of mind to realize the advantages in the wealth of this Octoberish suitor to her widowed May. A ready-made family of eight children,



Photograph by H. Applegate

MONUMENT TO BRIDGET COKE IN THE PARISH CHURCH AT
TITTLESHAL

of whom the older were only a few years younger than herself, must have given even this abundantly matter-of-fact Elizabethan mistress some pause; and worse, she was familiar with the circle of the Court, and liked its gayeties, but this one of the various men who sought her hand, however important his position as Attorney-General, was plain Edward Coke, who kept immersed in the toil of law and mingled little in the festivities of which she was fond. Coke's overbearing temperament was well known, and the wags at Saint Paul's dragged out the fitting form of the ancient jest, saying there were nine objections to the marriage — Coke, and his eight children.

Whatever the course of the wooing, she accepted Coke after a time that could not have been long. Since her youthful and socially ambitious twenty was not proud of his eldery forty-six, she insisted that the marriage take place, not in a church, but in a private house. Perhaps the absurdity of the presence as wedding guests of eight children to whom she was becoming stepmother was too great for her. Coke acquiesced in her demand.

Chamberlain's letter to Carlton, November 22, 1598, reflects the way the world regarded this marriage: 'The seventh day of this month, the Queen's Attorney married the Lady Hatton, to the great admiration [i.e., wonder] of all men, that after so many large and likely offers she should decline to a man of his quality, and the world will not believe it was without a mysterie.' That is, scandalmongering people whispered that it might be one of those 'necessary' marriages not uncommon in the 'spacious days.' But the Cecils were shrewd people and knew the value of their matrimonial alliance better than the 'world.' Chamberlain was a day off on his date of the wedding, for Coke himself gives it as November 6.

Coke showed a precipitation that an access of emotion might more readily have accounted for in a younger man. Perhaps his common-law leanings had caused him to overlook in connection with his wedding a search for all the requirements thereunto provided by the civilian-hued ecclesiastical authorities. In his preoccupation with his nuptials, he committed three breaches of the law; in getting married without publication of the banns, without a license, and without the ceremony taking place in a church. Archbishop Whitgift

must have been deeply grieved at the failure of his former pupil at Trinity, and of Lady Hatton, to observe the ecclesiastical law. Since they had not complied with the requirements, their relationship, in the view of the Church, could be only meretricious until they were properly married. On learning of the situation, to save their precious souls, the Archbishop proceeded against them.

Like a penitent schoolboy, Coke could only plead his ignorance. It was a delightful bit for the gossipers at Paul's — the oracle of the law caught in the legal net of the Church. Perhaps there was some memory of this episode also, as well as of the failure to wear a gown to chapel, when Whitgift sent Coke the Testament with its inscription about having studied common law enough and thereafter studying the law of God.

What penalty his loving and conscientious friend the Archbishop imposed upon him is not entirely clear; it is not improbable that Coke had to make his submission in the same way that those of lower rank were required to make theirs; namely, to appear in church after the morning service, and upon their knees, in the middle of the church, publicly declare that whereas they had contrary to the laws of God and the Church of England disorderly procured themselves to be married without banns three times lawfully asked, or without any license or dispensation first obtained in that behalf, whereby they had incurred sentence of excommunication, they most humbly upon their knees confessed and acknowledged themselves to be heartily sorry, and professed that they would in the future live as good Christians, good subjects, and in all dutiful obedience to the laws of God and their Prince. In addition they had to pay a heavy mulct for charity.

Coke was not the man to turn the other cheek, and having learned something about the law of submissions, he soon found an opportunity to retort to his ecclesiastical friends. In November, 1598, shortly after his marriage, he ascertained that many recusants were making their submission to the ecclesiastical court through their proctors instead of personally. Apparently after submission, no indictment could be found against them. Coke wrote to 'his loving friends, Mr. D. Byng, Dean of the Arches; Mr. D. Stanhope, Chancellor to my Lord's Grace of Canterbury, Mr. D. Dun, Judge of the Audi-

ence, Mr. D. Gybson, of the Prerogative, and all the other judges exercising jurisdiction ecclesiastical within the providence of Canterbury,' warning them that under the law, an excommunicate recusant was required to make a personal submission, and requesting them not to grant absolution without such personal submission. And so he commended them to God, signing himself, 'your assured loving friend, Edward Coke.'

Lady Hatton refused to take her husband's name, which would have reduced her to plain Mistress Coke, and she otherwise made herself better known to posterity than Bridget Paston, all as will appear in due course.

Let Chamberlain, however, add here the first of the postscripts to the story of the wedding. Writing under date of August 22, 1598, a little more than nine months after the ceremony, he said: 'the Lady Hatton is brought abed of a daughter which stoppes the mouth of the old slander [i.e., the child was, after all, not born untimely] and about ten days since it was christened with great solemnitie, the Queen (by her deputy, the Lady Oxford) and the Countess Dowager of Darbie, being god-mothers, and the Lord Treasurer, god-father.'

It was a pretty family party, and shows the Lady Hatton not removed from the Court circle by her marriage to the man to whom she had 'declined.' The Queen's deputy, Lady Oxford, was Lady Hatton's aunt Anne, daughter of Lord Burghley. The new Lord Treasurer, who had taken that position of the infirm older statesman, Lady Hatton's grandfather, was Buckhurst, the literary Thomas Sackville, a member of the Inner Temple, who had years before written and had presented at that Inn of Court what may, perhaps, be regarded as the first English drama, the play of *Ferrex and Porrex*, and so was the precursor of that other dramatist who entered the Inner Temple a little more than a year after this christening — Beaumont. But the child, named Elizabeth, whom good society had thus auspiciously dedicated to the Lord, did not grow to maturity. Some four years later, however, Coke and Lady Hatton had another daughter, Frances, who will appear further in these pages.

XII

ON the Islands Voyage for which Essex was embarking when he wrote his letters to aid Bacon in wooing Lady Hatton, though the English fleet captured some prizes, the great Spanish treasure-laden flotilla gave it the slip, and the Earl showed his growing jealous greed of glory in threatening Raleigh with court-martial because he had not strictly followed orders under circumstances that forced a deviation, and in so doing had won the only notable success of the expedition. This trouble was patched up, and when Essex arrived back in England, October 26, 1597, the popular love of the gallant youth was undiminished. The Queen, however, held him responsible for the failure of the expedition to accomplish its objects, was cool to the Earl, and complained of his 'humors and ambitions.' While he had been away, her elevation of Lord Howard, the Admiral, to be Earl of Nottingham, gave him precedence over Essex, and adding to the injury, she had assigned the glory of Cadiz as one of the reasons for the honor. Essex sulked.

Bacon was serving in the Parliament of 1597 which assembled October 25. Though he took an active part without further offense to the Queen, he made no progress in political preferment.

When in the summer of 1598, on the matter of an appointment to the vacant post of Lord Lieutenant of Ireland, Elizabeth disregarded the arguments of Essex, the annalist Stow says that the Earl turned his back on the Queen, who promptly boxed his ears, and bade him 'get him gone and be hanged.' Indignant, Essex swore, touched his hand to his sword hilt, and stayed away from Court for months.

Old Lord Burghley died.

And Essex returned to London for the funeral August 29, 1598, but not to Court till the end of September, and commissioned, March 12, 1599, Lieutenant and Governor-General of Ireland, headed against the rebellious Irish the largest force the Queen ever sent to that troublesome country. He took with him his new stepfather, Sir Christopher Blunt, and the Earl of Southampton, who was in disgrace at Court. Essex got into disputes with the Queen about both these men. Henry Wriothesley, third Earl of Southampton, was but

twenty-six. On the death of his father while he was still an infant, he had, like Essex, come under the guardianship of Lord Burghley, as Master of the Court of Wards. Essex had taken Southampton on both the Cadiz and the Islands Voyage expeditions. Already Shakespeare had dedicated to him 'Venus and Adonis' and the 'Rape of Lucrece.' In 1598, while in the suite of Sir Robert Cecil in an embassy to Paris, he had made a hurried trip home and secretly married one of the Queen's maids of honor, Elizabeth Vernon, who was about to have a child. When the Queen learned of the situation, she had the poor girl imprisoned in the Fleet, and Southampton also, on his return from Paris. Bitter words and temporary banishment from Court had not been a sufficient deterrent of these episodes.

Large as it was, the English force proved under the leadership of Essex inadequate to the Irish task, and Tyrone, with whom he had a private conference at a river ford, outwitted the Earl in negotiations. Since the Queen did not accept his written explanations, Essex decided to bring to bear the persuasion of his presence and to chance a breach of his express instructions against his return without permission.

Mud-spattered from head to foot, Essex pressed into the royal chamber at ten o'clock of a September morning, 1599, and found the ageing Queen just arisen. As he knelt and kissed her hand, the former fondness of Elizabeth for her favored lad flickered up, and she spoke to him so kindly that when he left the presence, he was heard to say that though he had suffered much trouble and storms abroad, he found sweet calm at home. But in the afternoon, she charged him with disobedience, questioned him harshly, and sent him from her, bidding him place matters before the Privy Council. It was the last time she ever saw the lad she had loved so much.

He failed to attend the Council the next morning until summoned, and the Councillors let him stand, though, respectfully, they stood also, and charged him with culpability in (1) his unauthorized return; (2) his intrusion on the Queen; (3) his insistence on Southampton as general of the horse; (4) an excessive liberality in conferring knighthood; and (5) writing disrespectful letters. Later, the Council made much of his private conference with Tyrone, to whom Essex had pro-

mised to submit proposals for peace in Ireland that included freedom for the Catholic religion, a thing impossible to the temper of the times in England. A really religious strain in him, tending towards Puritanism, had in it the tolerance of a liberal mind which showed in his numbering Catholics among his friends, a handle by which his enemies laid hold on a claim of Catholic intrigue, and, indeed, the Catholics seemed to have hoped through him for a gain in tolerance.

After an intervening day's consideration, the Council, October 1, 1599, committed Essex to confinement at York House, in charge of Egerton, the Lord Keeper. The Queen, who, after all, pretty much followed out his Irish policy, to discipline him would show no sign of relenting and let him stay. In Egerton's household at York House, Essex found an old acquaintance in John Donne, the poet and the preacher to be, who, after his years in Lincoln's Inn and service as one of the immediate retainers of Essex on the Cadiz and Islands Voyage expeditions, was then employed as secretary to the Chancellor, and lived as one of the family.

Six months passed before the Council and the Queen let Essex go to his own house, still in custody; and though his wife was at childbirth, he was not at this time allowed to see even her. Popular sympathy and the affection of the Irish troops hurt rather than helped his cause. An objectionable book, dedicated to Essex, procured the lodging of its author, Dr. Hayward, in the Tower for six months. The Queen eagerly asked Bacon if there were treason in it; and the lawyer answered, that though he found no treason, he found felony, and let down the vindictive Elizabeth with — 'for the author hath stolen many sentences from Tacitus.'

About this time a discharged servitor of Essex stole a casket containing letters of the Earl, and blackmailed Lady Essex into paying for their return. The blackmailer, after delivering forged copies and trying to sell the originals to the enemies of Essex, had been taken, convicted, condemned to prison for life, and to stand with his ears nailed to the pillory with the inscription, A WICKED FORGER AND IMPOSTOR. The Privy Council appealed to public opinion through instructions to the judges about to go on circuit.

At last, on June 5, 1600, a special commission of eighteen

Councillors, nobles, and judges appointed by the Queen summoned Essex to York House to be tried on the charges which the Council had theretofore made against him. The members of the legal staff of the Crown reviewed the matter. Coke, speaking at length, hurled at Essex the diatribe of Cicero, '*Quousque tandem abutere, Catilina.*' The tribunal passed the censure that the Earl should be suspended from his offices of Councillor, Earl Marshal, and Master of the Ordnance, leaving him only the Mastership of the Horse with which he had begun, and that he should stay prisoner in Essex House until the Queen should remit the sentence, as they thought she would soon do, and as on August 26, 1600, she did, from the confinement, with, however, a prohibition of the Court.

But Essex, who had drunk deep the poisoned wine of prominence, could no longer endure obscurity, and in the forced retirement a sense of injustice rankled. Debts pressed upon him, and the Queen paid no heed, beyond a contemptuous remark, to his appeal for a renewal of the chief means he possessed in his monopoly patent to license dealers in sweet wines which Leicester had held before him. Frequent, unobsequious, but humble, eloquent letters to Elizabeth won no answer. Despairing, he indulged in bitter talk of the Queen, which may have reached the royal ears. Essex reopened a communication of some nature he had carried on with the Scotch King James, and, whatever had gone before, this time looking toward getting the right of James to the English succession recognized by Parliament — the sacred succession, on which Elizabeth, cautious of its political effect, and so tenacious of her sovereignty that she could not endure the thought that one should reign after her, refused, to her dying breath, to commit herself.

XIII

THEN in and out of Essex House the bees buzzed busier than ever, as if about to swarm: Lord Southampton; Lord Rutland; Lady Rich, sister of Essex; his new stepfather, Sir Christopher Blunt; Sir Charles Davers and Sir John Davies; Henry Cuffe, Essex's secretary who wanted action; and Francis Tresham, the man who had been expelled from the Inner

Temple when Coke was a law student there and sent to prison for too great readiness with his sword; Catholics hoping for a chance at an inning; Puritan preachers smarting from ecclesiastical discipline — all came and went. Five of Essex's friends met at the Earl of Southampton's London residence of Drury House, where Sir John Davies took down the minutes of a plan to seize Raleigh, Cobham, and Cecil, whom they conceived to be conspiring against them even to the extent of threatening the life of Essex and others of his party, and then to take possession of the Court and present their grievances to the Queen. In January, 1601, an attack by Earl Gray and his followers on the Earl of Southampton, the result of a personal animosity, a breach of the peace for which Gray suffered two weeks' imprisonment in the Fleet, and certain threatening and warning letters, laid the foundation for the claim by Essex and his friends of dangers to their lives.

The watchful Council saw the signs of suspicious activity on the part of the Essex faction, and February 8, 1601, summoned Essex to appear immediately before it; but the Earl, fearing the Tower, pleaded illness and did not go. That night some one brought word to Essex House that Sheriff Smyth of the City was on the Earl's side, and as the Sheriff commanded a regiment of the trained bands his adherence seemed important.

Next day, Sunday, February 9, 1601, nobles, gentlemen, and their attendants kept arriving at Essex House and entered at the wicket gate, till perhaps three hundred had gathered in the courtyard, and the hive hummed with its swarm. Sir Ferdinando Gorges, captain of the fort at Plymouth, who had remained friendly to both Essex, his commander in the Islands Voyage, and to Raleigh, his kinsman, had earlier come to London at the request of Essex. Raleigh, intending to warn Gorges of the danger he ran in being absent from his post without leave, had asked him to call at Durham House; but Gorges, fearing seizure there, had postponed the time of the meeting to this Sunday, and named the river as the place. They came in their boats to the rendezvous and pulled away after Raleigh had warned Gorges to leave a sinking ship and Gorges had threatened Raleigh with a bloody day.

On this same Sunday morning, Essex sent out messages

to Lord Sands, Lord Monteagle, and to people in the City. Word of this came to the Court from which a warning was sent to the Mayor, and about ten o'clock Egerton, the Lord Keeper, Popham, the Lord Chief Justice, both friendly to Essex, his uncle Sir William Knollys, Comptroller of the Household, and the Earl of Worcester, also a kinsman, came with their personal attendants to the gate of Essex House, and were admitted without their servants through the wicket to Essex in the courtyard. When they had asked the Earl the meaning of the assemblage, and he had answered generally that there was a conspiracy against him, that counterfeit letters had been sent in his name, and that he and his friends were there to defend their lives, Egerton and his fellow Councilors assured Essex that if he would specify his grievances they would faithfully inform the Queen and justice would be done. Thinking the Earl intended to speak further, they followed him to his study, and there Essex, telling them that he was going to the City to see the Mayor, ordered them locked under a guard, in charge of Sir Charles Davers, who had the ladies go in to entertain the enforced guests. The guard included Francis Tresham, who was saucy to the dignitaries.

Confused, not waiting for horses to mount, Essex with two hundred followers went through the City crying, 'For the Queen, for the Queen,' and 'There is a plot against my life'; and he told those to whom he spoke that England was being sold to the Infanta, and that the atheists were betraying them all. The charge of atheism was an old one against Raleigh and apt to appeal to London, which liked Essex for the Puritan inclination of the strong religious strain in him. But though the populace pressed close and cheered, none took arms to join him. Essex learned his mistake in thinking Sheriff Smyth had either ability or intent to aid, and while the Earl and a few of his followers were taking a refreshment in the Sheriff's house, and beer was sent to those outside, the Sheriff slipped away to the Mayor, who was putting the City in a state of defense.

Thomas Cecil, Lord Burghley since the death of the old Lord Treasurer, and father of Lady Hatton, Coke's wife, came riding into the City with a herald bearing orders from the Queen, who, though sixty-eight, wanted to ride to the threatened fray herself. The herald in Cheapside proclaimed

Essex a traitor, and demanded that his followers disperse. Many of the Earl's company departed; the rest clashed with the trained bands at Ludgate, where the Earl tried to break through, but after his party had killed two, and a shot had scratched Essex, he and those still staying with him made their way to the river and by boat to Essex House.

There Essex, landing from his wherry, found his mansion besieged on the landward side and his four imprisoned members of the Privy Council gone. Sir Ferdinando Gorges, deserting the Earl's companions in the City, had returned to Essex House and released the Councillors from their captivity of more than four hours' duration. While in the gathering darkness an exchange of musket fire flashed out, in which Captain Owen Salisbury of the Essex band was killed, the Earl busied himself burning papers, and a little black bag, which, suspended from his neck, he wore next to his body, then proposed that he and his companions should sell their lives in a sally. Since they did not agree, Essex went to the roof to parley from there with Nottingham, the former Lord William Howard, his old rival for the glory of Cadiz, in command of the besiegers, and at ten o'clock that night, he surrendered. The Earls of Essex, Southampton, and Lord Rutland handed over their swords. With six other lords and gentlemen, they were sent to the Tower, and the rest of the little remaining band to other prisons.

XIV

MONDAY morning after that eventful Sunday began a busy week for Coke and his assistants on the legal staff of the Crown. Overstrung, bewildered, Essex had enmeshed himself. Sir Robert Cecil intended that the troublesome earl should not escape to continue his interference with the regular conduct of government, and the personal ambitions of the Queen's Secretary; and to the end of assuring the Earl's conviction, no one could be more useful than the man who had known Essex so well, Francis Bacon.

Since Essex had done for himself beyond any reasonable chance, Bacon, who up to the time of the outbreak had certainly made some endeavors in favor of the Earl, could do nothing further to help him; since, too, there was no more to

be gained from Essex, if Bacon refused to join in the prosecution, he would shut the door on the only source from which favor could come; and, even worse, he might be accused of being concerned in the Earl's affair, though in fact he was not in the least implicated. The pressures were strong, and the philosopher's moral courage not strong enough to resist them on a point of honor in refusing to act against one who, with so warm a heart and so stout a will, had befriended him. And he could plead in extenuation the course of duty as one of Learned Counsel for the Queen. So why should he be squeamish, though what he did were to win for him from posterity, which knows the reach of his intelligence, such phrases as the 'clearest mind and the coldest heart of his time'? If evil be charged against him, how much better were they who used him? The passions and ambitions of men often wear honor thin.

Members of the Privy Council, Coke and his associates, examined and reexamined all those who were held in prison. Coke and Bacon sifted the depositions and marked the parts to be omitted in the reading of them at the trial; for in treason cases there was no confronting the accused with the witnesses against them, no cross-examination, no witnesses heard for the defense. Coke carefully prepared his address. Decision was reached that of the nobles only Essex and Southampton should be prosecuted. The day of the trial was set for February 19, 1601, just ten days after the outbreak. There was work to do, and the Solicitor, Thomas Fleming, whom the Queen had recently commissioned with Coke to inquire into the abuses of monopoly, was recalled from this employment to labor on the Essex case. The line to be taken was: 'Vaulting ambition which o'erleaps itself and falls on the other.'

The day of the trial arrived. In Westminster Hall the scene was set. Ropes enclosed a rectangle on the floor; at one end of the rectangle, a canopy marked the seat to be taken by the Lord Treasurer, Buckhurst, who was to preside, and at each side of the seat were the benches for the peers. Opposite stood the place for the prisoners, on one side of this the benches for the judges, who were to declare the governing law, and on the other the benches for counsel to the Crown.

The law of the times in treason cases did not permit counsel to the prisoners.

Sir Walter Raleigh, Captain of the Queen's Guard, came with forty of the tall, well-born guardsmen, and their scarlet uniforms, with the gold rose embroidered on their backs, splashed the colorful place with their more vivid color. Outside the roped rectangle, on rising tiers of benches, most of the upper world of Westminster and London were seated; nobles, foreign ambassadors, higher officers of government, those who counted greatly in the society of the day.

Attorney-General Coke, turned forty-nine on his birthday, the Sunday before the one on which Essex had run wild, came in. His nearly seven years in the office had established his reputation as a prosecutor, and men had fled to the Continent, rather than endure the rasping file of his tongue. Francis Bacon, especially assigned to this case, his frustrated twoscore years so far without office other than that of Queen's Counsel Learned in the Law, came to face down the accusation of ingratitude made by the heart of the accused Essex. Henry Yelverton, the Queen's Serjeant, then a man about thirty-five, came with Coke and Bacon.

The judges were Sir John Popham, Chief Justice of the King's Bench, an elder of about seventy; Sir Edmund Anderson, Chief Justice of the Common Pleas, Reader at the Inner Temple during Coke's law-student days; Sir William Peryam, Chief Baron of the Exchequer, and six puisne judges; Lord Buckhurst, the Lord Steward presiding, and the twenty noblemen, commissioned as the peers of the prisoners for their trial, took their places.

The officers of the Tower brought the Earl of Essex and the Earl of Southampton to the bar, the axe borne before them held with its edge turned away from the accused, and delivered to the Court the precept for the production of the prisoners. At the time of his trial, the Earl of Essex was thirty-five, and Southampton, twenty-eight. The two young nobles, meeting as prisoners at the bar of the Court, kissed each other's hands and embraced.

Hatreds and jealousies of ten years were in the tense air of the court-room. Sir Robert Cecil, staying in the background, remembered how Essex had kept the Queen upset and ren-



SIR EDMUND ANDERSON
National Portrait Gallery, London

dered the doing of business difficult; he remembered his delay of appointment for the Secretaryship while Essex urged for Davison; he remembered Essex's disconcerting volunteer interference with the foreign service; he remembered Essex's words in the coach disparaging his ability. It was a long score.

Sir Walter Raleigh remembered how, fourteen years before, Essex, then a downy-cheeked youth, had carried from him the promising first place in royal favor; he remembered Essex's rankling unjust threat of court-martial on the Islands Voyage; he remembered those lands of Babington he had, that should more justly have gone to Sir Francis Walsingham, and so to Essex's wife. Coke, who had in him little of the spirit of which forgiveness comes, remembered how Essex had held up his appointment to office, and pushed the upstart Bacon, whom Coke had to use in this business of the day. And Bacon, with bitter thought of his years of disappointment, sat facing his task with only a hope, no certainty, of the thirty pieces of silver.

The Serjeant-at-arms called the roll of the peers. Though among them were relatives of Essex, such as Lord Hunsdon, his uncle, and the Earl of Worcester, and other good friends; among them also were William Howard, Earl of Nottingham, Lord Admiral, with memories of the bitterness over the glory of Cadiz and the contest for precedence; Lord Cobham, who had won the succession to his father of the Wardenship of the Cinque Ports that Essex had desired, whom the mind of Essex joined with Cecil in conspiring against him; Lord Rich, estranged from his wife, Essex's sister, whom he felt unduly favored Essex's friend Mountjoy, left in command in Ireland; Lord Burghley, Coke's father-in-law, family head of the Cecils; and Lord Gray, of the fracas with Southampton. When Gray's name was called, Essex looked laughingly at Southampton, and jogged his arm.

Essex asked the privilege of challenging some of those whose names had been called, but, legally enough, it was denied. When the Clerk of the Crown read the indictments, both prisoners pleaded not guilty, and put themselves for trial on God and their peers. Serjeant Yelverton opened with a statement of what the Crown would prove.

Coke, continuing the case, began with an exposition of the law of treason, then insinuated that the destroyed secret of the little black purse Essex had carried next to his body contained worse than the facts alleged. In a series of rhetorical questions, Coke enumerated the honors the Queen had given the Earl, and conveyed the implication of gross ingratitude. He paraded the agreement of the depositions on the facts, and boasted the mercy of the Queen that no man had been 'wracked, tortured or pressed in getting them.' Implying a design to gain the Crown, with his bitter breath he spat at the accused Robert, Earl of Essex, the invective, 'But now, in God's most just judgment, he of his Earldom shall be Robert the Last that of this Kingdom thought to be Robert the First'; and challenged Essex to deny that the little black bag had contained the plan of such a design.

Essex retorted, 'Will your Lordships give us our turn to speak, for he playeth the orator, and abuseth your Lordships' ears, as with slanders, but they are but fashions of orators in corrupt states.' Though it was not a matter of right to answer the allegations point by point, the privilege had been granted Sir Nicholas Throgmorton, Raleigh's father-in-law, who had been acquitted at his trial for treason in April, 1554, and in subsequent cases was allowed.

So the trial went on; the depositions were read, bringing out the facts already related, of the plans of Essex and his friends, and the clash with the authorities. Coke pressed the charges, and Essex answered. With respect to Coke's parade of the agreement of the depositions of the other prisoners, Essex retorted that 'the self-same care and the self-same examiner' adequately accounted for the similarity. There was a heated colloquy over the forged-letters incident Essex claimed as one of his grievances.

Bacon, rising to speak, made his comparison of Essex to Peisistratus, who wounded himself, and ran crying to Athens that his life was sought, and to the Duke of Guise, who, with only eight followers, had 'thrust himself into the streets of Paris on the day of the Barricades in his doublet and hose, and found that help in the City which, thanks be to God, you failed of here.'

Essex reminded Bacon that he had once spoken more fa-

vorably, and Bacon faced out the awkwardness of his appearing against his friend at the trial with 'My Lord, I spent more hours to make you a good man than upon any man in the world besides.'

Members of the audience relieved the hours of the trial with beer and the smoking of tobacco, which Raleigh had not long before introduced from the New World.

Though nothing could have saved Essex, he delivered himself to his enemies by saying that he had heard Sir Robert Cecil tell one of the Privy Councillors that the Infanta of Spain had the right to the Crown of England. At this, the gibbous Cecil stepped forward from his position of obscurity and with pent-up passion blazed out:

The difference between you and me is great, for I speak in the person of an honest man, and you, my Lord, in the person of a traitor: so well I know you have wit at will. The preëminence hath been yours, but I have innocence, truth of conscience, and honesty to defend me against the scandal of slanderous tongues and aspiring hearts; and I protest before God I have loved your person, and justified your virtues; and I appeal to God and the Queen that I told Her Majesty your afflictions would make you a fit servant for her. And had I not seen your ambitious affections inclined to usurpations, I could have gone on my knees to Her Majesty to have done you good; but you have a sheep's garment in show, and in appearance are humble and religious; but God be thanked, we know you, for indeed your religion appears by Blunt, Davies, and Tresham, your chiefest councillors for the present: and by promising liberty of conscience hereafter. I stand for loyalty, which I never lost; you stand for treachery wherewith your heart is possessed, and you charge me with high things, wherein I defy you to the uttermost.

You, my good Lords, Councillors of State, have had many conferences, and I do confess I have said the King of Scots is a competitor, and the King of Spain a competitor, and you, I have said, are a competitor: you would depose the Queen, you would be King of England, and call a Parliament. Ah, my Lord, were it but your own case, the loss had been the less: but you have drawn a number of noble persons and gentlemen of birth and quality into your net of rebellion, and their blood will cry vengeance against you. For my part, I vow to God, I wish my soul were in Heaven, and my body at rest, so this had never been.

As Cecil paused for breath, Essex interrupted with:

Ah, Mr. Secretary, I thank God for my humbling; that you, in

the rust of your bravery, come to make your oration against me here this day.

Cecil then went on:

My Lord, I humbly thank God that you did not take me for a fit companion for you and your humors; for if you had, you would have drawn me to betray my sovereign, as you have done: but I would have you name the Councillor you speak of. Name him! Name him! Name him if you dare! If you dare! I defy you, name him, if you dare!

When Sir William Knollys, who was named and at once sent for, came, he said all that had happened was that Sir Robert had at one time read, but without approval, from a book which put forward the Infanta's claim. The false charge Essex had made seriously impaired his one chance of escape in such sympathy as the peers felt for him.

The prisoners were taken away. The judges declared the law:

That in case where a subject attempteth to put himself into such strength so the King shall not be able to resist him, and to force and compel the King to govern otherwise than according to his own royal authority and direction, it is manifest rebellion; and that in every rebellion, the law intendeth as a consequence the encompassing the death of the King, as foreseeing that the rebel will never suffer the King to live and reign, who might punish or take revenge of his treason or rebellion.

On a poll, the Lords gave a unanimous vote of guilty against both Essex and Southampton.

The prisoners were marched again to the bar, and the Lord High Steward, Buckhurst, delivered the terrible sentence for treason.

The Lord High Steward broke his staff. The Serjeant-at-arms dissolved the Court.

The Lord High Constable and the Lieutenant of the Tower took their prisoners away, and the Gentleman Porter, who followed, carried his axe with its edge towards the Earls.

Reluctantly, the Queen signed the death warrant, which, as usual for nobles and knights, omitted the hanging and the rest and left the work entirely to the axe; and February 25, 1601, Essex was executed at the Tower. Raleigh, again on duty with the Guards, looked on from a balcony.

But Coke had more work to do. On March 5, 1601, Yelverton again opening, Coke conducted the trial at Westminster of Essex's stepfather, Sir Christopher Blunt, Sir Charles Davers, Sir John Davies, Sir Gilly Merrick, and Henry Cuffe. Bacon appeared specially against Sir John Davies, and Solicitor-General Fleming against Sir Charles Davers. Sir Christopher Blunt and Davers were beheaded on Tower Hill. Lettice lived long after, but married no more. Cuffe, who had served Essex as secretary, and Merrick, who had served him as steward, were hanged, drawn, and quartered at Tower Hill. Davies, after a year's imprisonment, was pardoned.

The sentence against Southampton was commuted to life imprisonment. Rutland escaped without trial on payment of a fine of thirty thousand pounds, and many others were likewise let off on payment of fines ranging down to forty pounds, among them Lord Monteagle and Sir Robert Catesby, both of whom will appear again in the narrative.

And Bacon, as well as Coke, had more work to do. The Queen, who had no sense of the niceties of honor except with respect to the duties of others to herself, and in such matters as touched her sister royalty, the late Queen of Scotland, leaving no spot of the garment of Bacon's soul undyed with the tinge of shame, commanded Bacon, as a writing man, to write the 'Declaration of the Practices and Treasons attempted and committed by Robert, late Earl of Essex, and his Complices,' to tell the official tale to the public with which the beheaded Essex had been ever popular.

XV

By way of reward, the Queen assigned to Bacon twelve hundred pounds of Catesby's fine. 'The Queen hath done something for me, though not in the proportion I had hoped,' he wrote to a friendly creditor. It need hardly be said that the money was welcome. Only a year and a half before, one Sympson, a goldsmith — 'this Lombard,' as Bacon called him — had caused a body execution to be levied on Her Majesty's Counsel Learned in the Law, just as he was leaving the Tower after taking some depositions in one of the popish plots against Elizabeth. To procure funds for pressing needs, he had borrowed from Sympson, for security had given his bond

for three hundred pounds, and, unable to pay at the due date, he had confessed judgment, on which Sympson had agreed to delay execution and wait for payment until the beginning of the next term of court.

Since payment was not then immediately made, the creditor, without further soliciting, promptly caused the arrest. The bailiff would have thrust his body security in a common prison, but the philosopher-lawyer saved himself this ignominy by a hurried appeal to his friend, Sheriff Moore, who had the debtor detained in 'a handsome house on Coleman Street,' whence Bacon sent an appeal to his friends Robert Cecil and Lord Keeper Egerton, complaining of the contempt shown Her Majesty in this interference with her counsel in going and coming on her service. Whether Cecil relieved his cousin's embarrassment on this occasion as he did on some others, or whether he and Egerton frightened the goldsmith into loosening his grip, in some way Bacon got out of the difficulty.

Bacon's 'Declaration of the Practices and Treasons attempted and committed by Robert, late Earl of Essex, and his Complices' had hardly gone to press, about two months after the trial, when one day both Coke and Bacon were in the Court of Exchequer. Bacon was there on a matter of one George Moore, a recusant, whose land the Government had seized, but had restored on his submission to the Established Church. The recusant, however, had relapsed, become a fugitive, and, it was said, a practicing traitor. Her Majesty's Learned Counsel was carrying through a proceeding to re-seize his land for the Crown. Apparently, Coke had been concerned with the earlier seizure and return of the lands, and was interested in following the new application in Bacon's hands. Something Bacon said flicked Coke, ever sensitive to anything that could possibly be construed into an imputation against his infallibility as a lawyer, and he flared: 'Mr. Bacon, if you have any tooth against me, pluck it out; for it will do you more hurt than all the teeth in your head will do you good.'

'Mr. Attorney,' Bacon coldly answered, 'I respect you, I fear you not, and the less you speak of your own greatness, the more I will think of it.'

'I think scorn to stand upon terms of greatness towards you, who are less than little; less than the least,' Coke retorted, and went on with even more insulting words.

'Mr. Attorney,' Bacon interrupted, 'do not depress me too far; for I have been your better, and may be again when it please the Queen.'

Coke angrily continued his abuse, bade Bacon not to meddle with the Queen's business, but to attend to his own, and cast up at him that he was unsworn. This last statement referred to the fact that, though Elizabeth had employed Bacon as one of counsel, she had never signed any patent conferring the office, and he, of course, had never formally assumed it.

'Sworn or unsworn,' said Bacon, 'is all one to an honest man. I ever set my service first, and myself second, and I wish to God that you would do the like.'

'You should have a *capias ut legatum* clapped on your back,' Coke shouted, referring to Bacon's arrest for debt just related.

'You cannot do that,' Bacon answered. 'You are at fault, you hunt upon an old scent.'

Though Coke kept on, Bacon said no more; but since it would not do to have unrefuted a possibly biased report of this clash made to Mr. Secretary, Robert Cecil, Bacon wrote a statement of it to him. He also wrote the following letter of expostulation to Coke:

Mr. Attorney — I thought best, once for all to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion. What it pleaseth you, I pray, think of me: I am one that knows both mine own wants and other men's; and it may be, perchance, that mine mend, and others stand at a stay. And surely I may not endure in public place to be wronged, without repelling the same to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the Solicitor's place (the rather I think by your means), I cannot expect that you and I shall ever serve as Attorney and Solicitor together; but either to serve with another upon your remove, or to step into some other course; so as I am more free than ever I was from any occasion of unworthy conforming to

you, more than general good manners or your particular good usage shall provoke. And if you had not been short-sighted in your own fortune (as I think), you might have had more use of me. But that tide is past. I write not this to show my friends what a brave letter I have written to Mr. Attorney: I have none of those humors. But that I have written is to a good end, that is, to the more decent carriage of my Mistress's service, and to our particular better understanding one of another. This letter, if it shall be answered by you in deed, and not in words, I suppose it will not be worse for us both. Else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being but to yourself, I for myself rest.

This incident shows the animosity these two men felt towards each other, already deeply rooted. To the arrogant Coke, Bacon at that time was but a whippet upstart in the law, who, nevertheless, had embarrassed him during his Speakership, had been influential enough to keep him out of his advancement to the Attorney-Generalship for a year, perhaps whose younger person and more agreeable ways the Lady Hatton would have preferred to his 'curst temper,' his, to her, eldery years, and his large ready-made family, which only the size of his fortune had been heavy enough to outweigh. And Bacon saw in Coke an obstacle to his appointment to the office of Attorney-General. As a fair fight, Bacon might not have cherished any bad feelings for his failure for that office, but apparently never fully realizing how enduring the Queen's resentment at his Parliamentary stand, he felt his failure at the Solicitorship just the result of malice on Coke's part.

Bacon, who had the larger mind, never undervalued Coke, but always fully recognized that the older man was a preëminent lawyer, and frequently expressed his admiration. As an instance, when nearly two years later than the episode just related, the Queen created eleven serjeants, among them that Robert Barker whom Coke's sister Margaret had married, some one, disparaging the ability of this new serjeant, remarked that his being Coke's brother-in-law was the only reason possible to assign for his appointment, Bacon wittily said, 'Nay, if he be Mr. Attorney's brother in *law*, he may well be a serjeant.'

Coke, on the other hand, had no vision of the mental range

and power of Bacon, felt only contempt for his working at philosophy and his large correspondence with scholars, had no appreciation of his sense of statesmanship, and for years even failed to see that Bacon, too, was a great lawyer. Coke, frequently boasting himself that his honors came to him without seeking, oblivious of his own constant putting himself in the way from which favors flowed, felt that whatever Bacon got came as a result of soliciting and had little if any justification.

After the trial and execution of Essex and his fellows, Coke spent two years of lawyer labor with only two incidents that require mention in these pages, and these Chamberlain relates in a single letter dated September 19, 1601, in which he says, first speaking of the Queen in one of her progresses that she 'made a step to Mr. Attorney's [Coke] at Stoke, where she was most sumptuously entertained and presented with jewels and other gifts to the value of 1000*l.*, or 1200*l.*,' and Chamberlain went on to say: 'This week he married his daughter [Anne] at London to Sir Thomas Sadler's son, [Ralph Sadler, Esq.] of this country, with whom he gave 3000*l.*, and furnished the feast with all magnificence. The gifts given by friends of the bride came to about 800*l.*'

This letter indicates the ownership of a house at Stoke Pogis by Coke. It was only shortly before this time that he had acquired by lease from the Crown the mansion which the poet Gray afterwards, with some historical error, celebrated in his 'Long Story.' Henry, Earl of Huntingdon, had rebuilt the property in Elizabethan style. Years afterwards, Coke was able to purchase the fee from the Queen's successor on the throne.

Sir Thomas Sadler, whose son Coke's daughter married, was the staunch and able member of Elizabeth's Council, who, as Special Emissary to Scotland for Henry VIII, had looked on Mary Stuart in her cradle, had, under Elizabeth, been one of the English Commission to investigate the death of Darnley, had been charged with the arrest of the Duke of Norfolk on his intrigue for marriage with the Scotch Queen, and had twice been her custodian, once at Sheffield and again at Tutbury, where he finally turned over his charge to Sir Amyas Paulet, with whom young Bacon had been in France.

XVI.

As the principal law officer of the Crown, Coke, of course, attended the Parliament of 1601, in which Bacon was again a member of the Commons, and on a bill against monopolies, spoke in favor of the Queen's prerogative in granting them. Two years passed, then, March 24, 1603, Elizabeth died — the Queen whom these two with so many other loyal Englishmen had served with all their power in every opportunity afforded them.

Throughout her life she had refused to settle the succession, and across the Scotch border James waited and hoped in a restless anxiety for fear the great prize might some way escape him. He had too acute a mind to miss the obvious comparison of the Promised Land, and sometimes jested about his forty years of waiting in the wilderness — he was just under thirty-seven at the death of Elizabeth, but waiting years are long years. Then his time came. No more nobles, whose bloody frays had terrorized his soul, filled it with an abhorrence of violence, and brought him to wearing garments padded mattress-thick. No more setting up of Tulchan bishops, stuffed calfskins to make a Presbyterian cow give down in support of a royal episcopacy. No more sour Calvinists with power enough to bully him. No more poverty for a king who knew he had a capacity to enjoy some lavish spending, but an almost Promised Land, at least a land flowing with milk and honey.

How tantalizingly Elizabeth had refused him the income from his Lennox family acres in England; how often she had merely promised him a great deal of money, and how, sometimes, she had promised a little and sent less, and once at least, she had promised money and some dogs, and sent the dogs. The English Queen had perhaps murdered his mother — but then that mother had never shown any fierce affection for him; worse than this, Elizabeth had kept him pinching. Those English were a people who showed respect for the divinity of a sovereign; he had seen it across the Border, not like his quarrelsome Scots.

No wonder he let whispers from Spain, from France, trickle into his ear, and intrigued a little abroad. No wonder he became uneasy as Elizabeth approached threescore and ten



KING JAMES I
National Portrait Gallery, London

without uttering a word of real assurance on his succession. No wonder he received the emissaries of Essex; and no wonder that when Sir Robert Cecil, the powerful center of the strong government of England, secretly communicated with him advising him that if he did not intrigue (with any one but Cecil and Henry Howard and the Earl of Northumberland), but quietly waited, all would be well, the greatly relieved James followed the advice.

On the day of Elizabeth's death, the Council published a proclamation declaring James the King of England. Sir Robert Carey, the Queen's kinsman, with spurs on near her bedside at the end, had taken his departure with that of her last breath and galloped towards the Border — only the earliest of the stream of those who raced along the English highways to meet the approaching King, that he might plainly see how loyal they were. James bridged an awkward governmental interval by a proclamation that all persons at the time in office should so continue until his further pleasure were known. This, of course, included Coke as Attorney-General; but since the Queen had never signed an actual patent for Bacon as Counsel Learned, it did not exactly cover him.

To meet James advancing into his new kingdom, Bacon sent a letter saying that since he, the son of a former Lord Keeper, had enjoyed liberty of access to her late Majesty, he ventured to approach the new sovereign. Refraining from mention of the part he had taken in the trial of Essex, he referred to the work of his brother Anthony with the young Earl in endeavoring to further the cause of James, and said that he had taken a substantial part in those efforts. In short, Bacon offered his services to the new king. Clearing up the Essex episode as much as he could, he wrote to the Earl of Southampton, still in the Tower, but expecting to be freed on the coming of James, saying, 'I may safely be now that which I was truly before,' his Lordship's humble and most devoted servant. With that written, and a letter from the friendly Northumberland, expected to be a power in the new reign, Bacon joined the northward pilgrimage and at some point met the King's party.

He found Coke also there, and, closely observing the manner of the King with him, was pleased to see that though his

new Majesty spoke with the Attorney-General, 'being urged by the Treasurer of Scotland,' yet he spoke no more than needs must. Bacon, having Northumberland's letter to the King, was promised private access.

Coke was to go to meet James on another occasion of the King's coming to London from Scotland, and Bacon, not going himself that time, was, however, to send his friend Yelverton to see how the King received Coke — but that was yet fourteen years away.

In due course, the new monarch formally confirmed Coke as Attorney-General, and Bacon as Counsel Learned, this time with no ambiguity in his position; and, further, James, expansively creating knights in his new joy and his desire to make people around him happy, and to win the affection of his new subjects, created Coke Sir Edward, May 22, 1603, doubtless even more to the satisfaction of Lady Hatton than her husband.

There was soon to be King's work for Coke to do, and Coke was ready to earn what his new sovereign might have to bestow.

XVII

ABOUT the time Coke was toiling with the intricacies of Shelley's case, an incident happened in London of a kind to become the talk of the town. Her Majesty Queen Elizabeth, proceeding from the royal barge to her palace, came to a spot where the ground was muddy. As she hesitated, a tall young man stepped from the onlooking throng that ever gathers at the approach of royalty, threw his finely embroidered cloak across the puddle, and, with a courtly bow, begged Her Majesty proceed. When she had afterwards inquired the name of this gallant gentleman, had sent a message offering to replace the muddied garment, and received an answer that he asked a far greater boon, the privilege of wearing the cloak that bore the imprint of her foot, what feminine heart could fail to be pleased? And Elizabeth especially ever had an eye for handsome courtliness. It is a good story, inherently probable, and may be true as well as popular.

Raleigh came of a race of the smaller gentry of Devonshire, where his family connections were of the best. One has a

glimpse of his father bringing a vessel to Weymouth and taking to France the escaping Sir Peter Carew, who, after indulging in a hope of marrying Mary Tudor, had become implicated in the Wyatt conspiracy. Foxe's 'Martyrs' tells of the kindness of Raleigh's mother courageously visiting in prison a poor woman condemned during the Catholic reaction.

For a time Raleigh attended at Oxford, and, by way of Lyon's Inn, became a member of the Middle Temple in 1574, the year after Coke entered the Inner Temple. At these adjacent Inns with their small number of entrants the two young men, different as their aims were, could hardly have avoided a casual acquaintance. The new Middle Templar was not one of those who settled to the ardors of the law. Of the same age as Coke, at the time of his introduction to Court, by way of the cloak incident or otherwise, he was only about twenty-eight; yet he had fought with the Huguenots in France for six years, with the Prince of Orange in the Netherlands for almost two years, had engaged in privateering with his half-brother Humphrey Gilbert, and had just come to London after duty with the army in Ireland, where he was one of two captains who put to the sword some hundreds of a Spanish expedition which had landed in aid of the rebellious Irish.

Elizabeth bestowed on him the forfeited Babington estates, as told in the story of Essex, and other land, granted him the privilege of exporting cloth free of duty, gave him a monopoly of licensing wine houses, which brought an income of from 800*l.* to 2000*l.* a year, in 1584 knighted him, the next year appointed him Warden of the Stannaries, Lord Lieutenant of Cornwall, and Vice-Admiral of the Western Shires; and, the year following, Captain of the Guard. Raleigh again engaged in privateering; became a member of the Parliament of 1589, and was, as has been seen, in the Parliament of 1593, of which Coke was Speaker.

Between these two Parliamentary appearances, however, he had committed the offense Elizabeth found hardest to forgive in her favorites. She discovered that he was making love to one of her maids of honor, Elizabeth Throgmorton, a young woman of twenty-seven, daughter of her independent but faithful old statesman, Sir Nicholas Throgmorton, and

the Queen promptly clapped both the lovers in the Tower for a time. After about two months she let Raleigh out in custody of Robert Cecil to go down to Dartmouth in Sir Walter's home country to prevent the local pillage of a Spanish carrack, prize of the privateering venture of a syndicate in which she and Raleigh had shares, that had turned out well. Shortly after, he married the maid of honor, and, still for a time forbidden the Court, he took his bride to the estate at Sherbourne, which he had acquired about a year earlier. Elizabeth Throgmorton proved a brave and loyal wife to her adventuresome husband.¶

The part he took with Essex in the Cadiz and the Islands Voyage expeditions, and in suppressing the outbreak of the young Earl has already been related.

Raleigh was an intimate of the group which gathered at the Mermaid, of Shakespeare, of Spenser, of Jonson, of Marlowe. He had known Sidney, knew Bacon and Fulke Greville, Sidney's friend and biographer as well as member of Elizabeth's Council; he spent hours with Hakluyt, with Cotton, with Selden. There is no evidence that Coke had the least contact with or felt the least interest in the gorgeous literary blossoming of his time, and some evidence to the contrary.

When not otherwise engaged, Raleigh wrote poetry, experimented in physics and chemistry, engaged in colonizing schemes in the New World, introduced tobacco to England, studied cosmography and navigation. It is of interest to lawyers that on his appointment as Governor of Jersey he caused the installation there of a public registry of land titles, which remained a permanent part of the real estate system of the Channel island, and an example for adoption by the country across the sea, which grew in part out of his plans for colonization.

The active-minded Sir Walter had, along in 1592-93, been a member of a little group, to which belonged Harriot, a mathematician, and Christopher Marlowe, both avowedly free-thinkers, that debated religious matters with a broad latitude of ideas. A Catholic pamphleteer had called it 'Sir Walter Rawley's School of atheisme.' The Privy Council had a warrant out for the arrest of Marlowe on account of his expressions of religious opinion, but his death had removed him from



SIR WALTER RALEGH
National Portrait Gallery, London

the jurisdiction of the Elizabethan Government; and later, Lord Keeper Puckering had inquired into the relations of Raleigh and his friends with the dramatist. Though, as a matter of fact, Raleigh discloses a deeply religious feeling, it was natural that his eager mind should have permitted itself the liberty of sometimes ranging outside the narrow orthodoxies of his day. The charge of atheism cropped out on various occasions.

To the end of the reign of Elizabeth, Raleigh was one of her favorites, suffering, like the others, his periods of eclipse, but always regaining her good graces. After the death of Essex, he was sole favorite, and his influence with the Queen incurred the enmity of both Sir Robert Cecil and Lord Henry Howard. In the secret correspondence of Cecil, Howard, and Northumberland with James, assuring him of their support in the succession of the English throne, Howard steadily vilified Raleigh, said that he was opposed to the Scotch King, and, though Northumberland wrote that he thought Raleigh loyal to the Stuart claim, but too erratic to be useful, Cecil did not deny that Howard's statements were true. On the death of Elizabeth, Cecil detained Raleigh when he attempted to join the procession on the road to meet James and accompany the King to London; and when Sir Walter was finally permitted to pay his respects to the new sovereign, James received him with marked discourtesy, and uttered his crude jest, 'They do speak of thee but rawley.'

Cecil and Howard worked effectively in shoving Raleigh aside. Almost immediately he lost his post of Captain of the Guard. By persuasion or on compulsion he resigned as Warden of the Stannaries. When the King, for the double purpose of damaging his supposed enemies and of ingratiating himself with his new subjects, announced that certain of the patents Elizabeth had granted were unlawful monopolies, among those he suspended for investigation was the patent on wine licenses that the Queen had bestowed on Raleigh. Adding to his discomfiture, the Bishop of Durham claimed Durham House, Raleigh's London residence, and James made an order transferring it to the claimant, ousting Sir Walter, and this, too, almost immediately after he had spent some 2000*l.* in renovating the mansion. So, stripped of his offices, de-

prived of his income, dispossessed from his house, all within a few months of James's accession, he had cause to feel resentful.

At that time the war of Spain with Henry IV of France centered in Ostend. For three years the Spaniards had besieged the town. Though the Dutch still held out, they were calling for help, declaring that, unless assistance came immediately, Ostend must fall and the seven independent provinces lie at the mercy of Spain.

In England a large group of special ardency in its Spanish antagonism, only a little more intense, however, than the general sentiment of the nation, kept constantly in remembrance the alarm of the Armada of 1588 and the Spanish menace that had continued for years. In the mind of this group Spain, the supporter of the Pope, whose name to them was anti-Christ, was responsible for all the tyranny, misery, and unrest from which the world was suffering; she was the hereditary enemy of England, an evil power, at last weakened and failing; it was the time for England to strike.

Of this group Raleigh was the most vehement and eloquent spokesman. He urged that the Dutch had been allies of England, and that it was infamous for Englishmen to desert their brothers. He offered at his own cost, out of his depleted resources, to lead two thousand men against Spain.

James, however, with his ideas of the divine right of monarchs, had little sympathy for the Dutch, feeling that they were engaged in a resistance to their lawful king. He desired peace with Spain, and upon his succession promptly issued a proclamation forbidding the capture of Spanish prizes, an action he felt sure would clearly indicate his wish to end the state of war and bring Spanish overtures for a treaty with England.

About this time Henry Brooke, Lord Cobham, who had spent many years abroad, returned to England, and sought permission from James to negotiate for peace with Spain. James told him only that the question of peace would have to be referred to the Council; but to the Duke of Lennox the King remarked that Cobham was busier in the matter than he need be. Cobham then spoke to Cecil about going abroad again to work for a peace, but Cecil dissuaded him.

Early in 1603, Raleigh ascertained that Cobham was corresponding with Count Aremberg, Prime Minister of the Archduke of Austria, and wrote to Cecil informing him of this correspondence, and urged the prompt seizing of Aremberg's man, La Rensey, to uncover the plot. Cecil, however, requested Raleigh not to speak of it to others, because Aremberg was shortly expected in England, and the King did not wish to have the first visit of the representative of Spain and Austria attended with suspicion which might imperil the anticipated peace overtures. Possibly Cecil counseled silence for another reason also. Married to Cobham's sister, he may well have wished to keep his brother-in-law out of difficulties. In due time Aremberg arrived.

No doubt Raleigh's warning to Cecil put him on the watch. In the beginning of August, 1603, a Scotchman was arrested at Dover on his return from Brussels to which he had carried a packet from Aremberg. The intercepted dispatches of Aremberg and the Scotchman's confession gave a clue to two treasons, which, though entirely independent of each other, were closely connected in time, and to some extent in the persons involved. The first plot uncovered was known among the conspirators as the 'Bye,' and has since been called the 'Priests' Plot,' and the 'Treason of the Priests.' The second conspiracy the participants called the 'Main,' the 'Surprise,' and the 'Surprising Treason,' and Coke the 'Spanish Treason.'

Those taking part in the Bye were Sir Griffin Markham, a Catholic gentleman of no particular means or influence, Watson and Clarke, two Catholic priests, George Brooke, a brother of Cobham, and Lord Grey of Wilton. The appearance of Lord Grey in a Catholic plot seems odd, for he was a Puritan, and a leader of his party; but the favor James had shown his enemies Southampton and other associates of Essex had stirred him to resentment, which, however, was not strong enough to hold him long in such company, and he soon withdrew. Probably Cobham had knowledge of the Bye treason without being concerned in it. The purpose of the Bye plot was to seize the King on Midsummer's Day at Greenwich or at Hanworth, where he was to spend the night on the way from Greenwich to Windsor. The conspirators

were then to convey the King to the Tower, or, if they could not gain admittance there, to Dover Castle, of which Lord Cobham, as Warden of the Cinque Ports, had control. When the King was completely in the power of the insurgents, they were to persuade him to grant a complete pardon to all participating in the plot, full toleration for Catholics, and also to dismiss certain of his Privy Councillors, and to appoint, in place of those dismissed, Watson as Chancellor, Brooke as Lord Treasurer, Markham as Principal Secretary, and Lord Grey as Earl Marshal and Master of the Horse. The King's departure from Greenwich earlier than they had expected frustrated the plot. The conspirators, then undecided what to do, finally resolved to abandon the enterprise altogether, and were about to disperse when Cecil arrested one of them and brought the whole affair to light.

It was charged that Raleigh and Cobham were the principal participants in the other plot, known as the 'Main.' The conspirators were to place Lady Arabella Stuart (who had no knowledge of the scheme) on the throne upon her coming to an agreement with the Emperor, the King of Spain, and the Duke of Savoy, that she would follow their guidance in contracting her marriage, would establish peace between England and Spain, and would tolerate Roman Catholic religion. It was alleged that to accomplish their purpose, Cobham had planned to obtain from the King of Spain, through Aremberg, the sum of 500,000 to 600,000 crowns. Cobham was to go to Spain, secure the money, and return to England by way of the Isle of Jersey, of which Raleigh was Governor. Raleigh was to meet Cobham in Jersey, and assist him in distributing the funds to certain persons, who might be able to hasten the bringing about of peace, and for his services in so doing, he was to receive the sum of 8000*l*.

About the middle of July, 1603, Raleigh was arrested and imprisoned in the Tower. Shortly thereafter he attempted suicide by stabbing himself with a knife, which, however, struck a rib and did not seriously injure him. His motive in this attempt is not clear. He may have realized that, guilty or not guilty, the accused in a treason trial had small chance to escape conviction, and sought to save himself from attainder for treason, with the consequent forfeiture of all his lands

and goods, leaving his wife and children penniless. On August 21, he was indicted, but was not brought to trial until November. Since in those days trials on charges of treason were held almost immediately after the indictment, and seldom more than a week or two thereafter, this delay in itself showed a hesitancy on the part of the prosecution.

XVIII

RALEGH was taken from the Tower on November 12, to be conducted to Winchester, where the trial was to be held, so that the people attending Court would not be exposed to the plague then raging in London. He had never been popular, the suspicion of atheism counted adversely, and the charge of Spanish intrigue aroused a mass hatred against him. As he passed through the streets of London, the mob execrated him and pelted him with stones and other missiles. Its fury was so great that the Lieutenant of the Tower feared he would not escape with his life.

The trial was before a special commission of Oyer and Terminer, of which the commissioners were Henry Howard, Earl of Suffolk, Lord Chamberlain; Charles Blunt, Earl of Devonshire; Lord Henry Howard, afterwards Earl of Northampton; Lord Robert Cecil; Lord Edward Wotton; Sir John Stanhope, Vice-Chamberlain; Lord Chief Justice of King's Bench, Popham; Chief Justice of Common Pleas, Anderson; Mr. Justice Gawdy and Mr. Justice Warburton.

The jury consisted of four knights, four esquires, and four gentlemen. The knights were Sir Ralph Conisby, Sir Thomas Fowler, Sir Edward Peacock, and Sir William Rowe; the esquires were Henry Goodyear, Thomas Walker, Roger Wood, and Thomas Whitby; and the gentlemen were Thomas Highgate, Robert Kempton, John Chawkey, and Robert Bromley.

Before the jury was sworn, Raleigh, asked whether he wished to challenge any of the members, said he knew none of them, but thought them all honest and Christian men; he knew his own innocence, and therefore would challenge none; all were indifferent to him. The jury was thereupon sworn.

The procedure in trials for treason has already been outlined in the narration of the Essex trial. The prosecution had the most skillful lawyers of the day, who prepared the case at

their leisure. It examined and reëxamined in private the accused person and all the witnesses against him. Substantially the investigation formed the real trial; for if the accused satisfied the Privy Council he was innocent, it immediately released him; and if he failed to convince them, he came to trial before a court in which there was hardly any hope for escape. Since the Council, with its long experience, was better qualified than the jurors to determine whether or not the accused were guilty of the crime charged, the jury undoubtedly felt that it should give much weight to the fact that the Privy Council had committed the prisoner for trial. The accused had no counsel, no opportunity to meet his accusers face to face, no chance for cross-examination. Counsel for the prosecution read only extracts from the various depositions, took good care to see that these extracts did not include anything favorable or of an explanatory nature, but those matters alone which seemed to establish guilt.

How tensely Lady Raleigh must have sat through the trial. In 1554, eleven years before her birth, her father, Sir Nicholas Throgmorton, accused of being concerned in Wyatt's Rebellion, had, in a like scene, defended himself for his life with wit and skill that won an acquittal. The crowd as he left the Court had thrown up their caps and shouted, and the jury had stuck to its verdict, though imprisoned and fined for it at the instance of the mortified Queen Mary, who had hoped finally to prove treason against her half-sister Elizabeth imprisoned in the Tower. Brave and true Elizabeth Throgmorton — would her husband escape as her father had escaped?

Serjeant Heath made the opening address.

Coke faced Raleigh. Both were fifty-one years of age. They differed widely in experience and temperament; Coke, the lawyer, spending his days in court, his evenings with his law books, conservative, careful, calculating; Raleigh, soldier, privateer, explorer, scientist, poet, ever ready to roll the dice with Fortune even to the hazard of death.

The prosecutor knew that he had a weak case, and that, for all the advantages on his side, he would have to work to win. And he was ready to work. He was there to sustain his reputation, to establish it with the new sovereign, to gain whatever of advantage there might be in convicting the man

the Government accused, the man whom Cecil and others in power perhaps would not be displeased to have safely beyond the chance of gaining with James the influence he had enjoyed with Elizabeth.

Essex, who had meddled with the affairs of government, though popular, had, with his riot and his slip at the trial, convicted himself; the man Coke faced in court was older, shrewder, more resourceful; and the evidence against him was tenuous. But Raleigh was unpopular to such a degree that, in the face of his lifetime of intense nationalism, people had promptly accepted as true the charge of Spanish intrigue and flamed into their outburst of hatred. When Coke essayed humor or wit, he became puerile, but he had a harsh tongue that could wear down endurance. He did not scruple to take advantage of the fact that juries are not likely to make nice distinctions of relevancy. Though this criminal work was not the *métier* of the man whose profound knowledge of the law shone in civil actions, still, for all the criticism of him (by laymen) for fumbling, he knew the strategy. It is by no means clear that Raleigh was spotlessly innocent. Perhaps Coke fully believed him guilty. Determined to convict, he handled the case in a manner that has scarcely a parallel in the history of English criminal trials for vituperation and vindictiveness.

Coke admitted at the outset that Raleigh was not concerned in the Bye treason, but only in the Main. Nevertheless, he explained in great detail the elements of the Bye treason and the acts of the various conspirators in it. Raleigh at length reminded the jury that he was not charged with the Bye, but only with the Main. Coke, nevertheless, continued discussing the Bye, and finally coming to that part of the Main at which Cobham was said to have remarked that 'there would be no safety in England until the fox and his cubs were taken away,' meaning that the King and his issue should be destroyed, he turned to Raleigh:

Coke: 'To whom, Sir Walter, did you bear malice? To the royal children?'

Raleigh: 'Mr. Attorney, I pray to whom or to what end speak you of this? I protest I do not understand what a word of this means except it be to tell me news. What is the treason of Markham and the priest to me?'

Coke: 'I will then come close to you. I will prove you to be the most notorious traitor that ever came to the bar; you are indeed upon the Main, but you followed them of the Bye in motive; I will charge you with the words.'

Raleigh: 'Your words cannot condemn me; my innocency is my defense. I pray you go to your proofs. Prove against me any one of the many that you have spoken, and I will confess all the indictments, and that I am the most horrible traitor that ever lived, and worthy to be crucified with a thousand torments.'

Coke: 'Nay, I will prove them all; thou art a monster; thou hast an English face, but a Spanish heart. You would have stirred England and Scotland both; you incited the Lord Cobham as soon as Count AreMBERG came into England to go to him. The night he went, you supped with the Lord Cobham, and he brought you after supper to Durham House, and then the same night by a back way went with La Rensey to Count AreMBERG and got from him a promise of money; after this it was arranged that the Lord Cobham should go to Spain and return by way of Jersey, where you were to meet him to consult about the distribution of the money, because Cobham had not so much policy or wickedness as you. Your intent was to set up the Lady Arabella Stuart as a title, and to depose our present rightful King, the lineal descendant of Edward IV. You pretend that this money was to forward the peace with Spain. Your jargon was peace, which meant Spanish invasion and Scottish subversion.'

Raleigh: 'You tell me news, Mr. Attorney.'

Coke, continuing, argued that Cobham was so weak of mind and so unskilled in plotting that some one else must have been the mover of his plan.

Coke: 'My lord Cobham, as your Lordships all know, in his courses was never a politician nor a swordsman, but the invention of these treasonable schemes belonged to a politician, and the execution of them to a swordsman. Sir Walter Raleigh was a man fitting for both.' Then, anticipating one of Raleigh's defenses, he said, '... and such was Raleigh's secrecy and Machiavellian policy in these courses that he would never confer but with one at once. He would talk with none but Cobham, because, sayeth he, one witness can never condemn

me. Since his first examination, he wrote to the Lord Cobham that he had been charged with many things, but had excused him in all; and let him know by his trusty Kemys that by the law one witness cannot convict a man of treason, and therefore bade his Lordship be of good courage... and now you shall see the most horrible practices that ever came out of the bottomless pit of the lowest Hell; for after Raleigh had gotten understanding in the Tower that Cobham accused him; which he heard by young Sir John Peyton, who had no purpose to tell it him, but to the error of his youth I impute it...'

Raleigh, interrupting, 'I now offer the Lords who examined me that Cobham had accused me; otherwise I had not been sent to the Tower.'

Coke: 'After Raleigh understood that he was accused by my Lord Cobham, it was contrived that the Lord Cobham should retract his accusation.'

Developing the evidence, Coke stated that in October, several months after the arrest of the prisoners, Cobham, in order to make it appear that before the alleged discovery of a plot he had already abandoned any intention of going to Spain, had written a letter, antedated to July 4, to Sir Thomas Fane, Lieutenant of Dover Castle, in which he made the statement that he had changed his mind about traveling. Fane was to be asked to write, under date of July 7, an answer saying he was glad to learn of the change of purpose. This answer, Coke said, was to be placed, together with a letter addressed to Cecil, in a Spanish Bible, and Cobham was then to ask for the ministration of a clergyman, suggesting Dr. Andrews, but hoping that Dr. Galloway, the King's preacher, would be sent. If he came, Cobham's man, seemingly by chance, was to make a discovery of these letters, which, it was believed, the clergyman would promptly report to the King.

Coke: 'Came this contrivance, think you, out of Cobham's quiver? No, but out of Raleigh's devilish and Machiavellian policy. You shall hear that it was after Cobham had had intelligence with this viper in the Tower that he devised that false artifice...'

Raleigh: 'What is that to me? I do not yet hear that you

have spoken one word against me; here is no treason of mine done; if my Lord Cobham be a traitor, what is that to me?’

Coke: ‘All that he did was by thy instigation, thou viper... I will prove thee the rankest traitor in England.’

Raleigh: ‘No, no, Mr. Attorney, I am no traitor. Whether I live or die, I shall stand as true a subject as any the King hath.’

Lord Chief Justice Popham: ‘Sir Walter Raleigh, Mr. Attorney speaks out of the zeal of his duty for the service of the King, and you for your life; be patient on both sides.’

Coke then read the confession of Cobham, dated July 20, in which Cobham admitted conferring with Aremberg about procuring 500,000 to 600,000 crowns from Spain; that he intended to go to Flanders to confer with the Archduke about it, thence to Spain and return by way of Jersey, where Raleigh would meet him and assist in the distribution of the money. Cobham further stated that he entered this course through Raleigh’s instigation.

Raleigh answered, told of his letter to Cecil stating his suspicions of Cobham, and pointed out how strange it was that he should be plotting with Cobham, knowing that Cobham had neither love nor following in England, whereas Raleigh had just resigned from the best command, the Wardenship of the Stanneries; that the kingdom was strong, united with Scotland, and able to defend itself; that Ireland was quiet and the Low Countries were at peace with England.

‘Instead of a lady whom time hath surprised, we have now an active King,’ he said, and continued that Spain had been repulsed six times; ‘thrice had I served against him myself at sea, wherein for my country’s sake I had expended of my own property 4000*l.*’; Spain was poor; instead of forty ships in port the Spanish King had not more than six or seven, and was driven to hire strange vessels to go to the Indies; ‘the Jesuits, his imps, were fain to beg at the church doors.’ Did ever any king disburse so much money without asking for security? Raleigh went on. And since every one knew that, in treating with other states for smaller sums, Spain demanded security, was it reasonable that he would give so great a sum to Cobham without security? Raleigh said that his own communication with Cobham had taken place only because Cob-

ham was contemplating the purchase of a farm, and wanted advice; that he had given Cobham for a cabinet 30*l.*, money 'which he offered to you, Mr. Attorney, for the drawing of his conveyances.'

When Cobham had been first examined, he had refused to sign his statement, 'standing upon it as a matter of honor that being a baron of the realm his declaration was to be accepted without subscription.' The Lord Chief Justice, who had then been sent for, told him that he ought to subscribe it, that his refusal would be a contempt of a high nature, and presently he did sign it. When afterwards the Lords had shown him the letter written by Raleigh to Cecil, on reading it he had exclaimed, 'that wretch, that traitor Raleigh, hath he used me thus? Nay, then I will tell you all'; and thereupon in his second examination he had said he was to come home from Spain by Jersey, but he was afraid if he did return that way Raleigh would have him in his power and would deliver him and the money to the King. This examination was not subscribed. Raleigh raised the point that all depositions ought to be subscribed and should not be read unless they were.

Coke: 'Being taken in the presence of so many Privy Councillors, to whom faith must be given, the declaration is of like force as if it had been subscribed.'

Raleigh: 'Surely, Mr. Attorney, you would not allow a bare scroll to have credit with the jury?'

Coke said, with respect to the fear of Cobham that Raleigh would betray him and send him and the money to the King, 'if he feared that you would betray him, there must of necessity be a trust between you. No man can betray another, but he that is trusted... next, Sir Walter, you discourse largely on the poverty of Spain; methinks it had been better for you to have stayed in Guiana than to have been so well acquainted with the state of Spain.... As for your writing against peace with Spain, you sought to cloak a Spanish traitor's heart.'

Raleigh: '... I claim to have my accuser brought here face to face to speak; and though I know not to make my best defense by law, yet since I was a prisoner I have learned that by the law and statutes of this realm in case of treason a man ought to be convicted by the testimony of two witnesses if

they be living.... If you proceed to condemn me by bare inferences without oath, without subscription, and without witnesses, upon a paper accusation, you try me by the Spanish Inquisition. If my accuser were dead or abroad, it would be something; but he liveth and is in this very house. Consider, my Lord, it is no rare case for a man to be falsely accused; aye, and falsely condemned, too....

'And, my Lords, for the matter I desire, remember, too, the story of Susannah; she was falsely accused, and Daniel called the judges fools, because, without examination of the truth, they had condemned a daughter of Israel; and he discovered the false witnesses by asking them questions. I may be told that the statutes I before named be repealed, for I know the diversity of religion in the princes of those days caused many changes; yet the equity and reason of those laws still remains, they are still kept to illustrate how the common law was then taken and ought to be expanded; but howsoever that may be, the law of God, I am sure, liveth forever; and the canon of God sayeth, "at the mouth of two or three witnesses shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death." And again, "one witness shall not rise up against a man for any iniquity or any sin that he sinneth; at the mouth of two or three witnesses shall the matter be established."...

'By the law of God, therefore, the life of a man is of such a price and value that no person, whatever his offense is, ought to die unless he be condemned on the testimony of two or three witnesses. If, then, by the statute law, by the civil law, and by God's word it be required that there be two witnesses at the least, bear with me if I desire one; prove me guilty of these things by one witness only, and I will confess the indictment. I stand not upon niceties of the law; if I have done these things, I desire not to live, whether they be treasons by the law or no. Why, then, I beseech you, my Lords, let Cobham be sent for; let him be charged upon his soul, upon his allegiance to the King, and if he will then maintain his accusation to my face, I will confess myself guilty.'

Lord Chief Justice Popham: 'Sir Walter Raleigh, for the statutes you have mentioned, none of them help you... they were found to be inconvenient and are, therefore, repealed....

All is now therefore put to the common law, and by the common law, one witness is sufficient, and the accusation of confederates, or the confession of others, is full proof. Neither is subscription of the party so material to the confession that it be otherwise testified by creditable witnesses....'

In order to procure a subscription, Popham had previously told Cobham that it was required, and failure to subscribe was a high contempt.

A gem of judicial reasoning was then contributed.

Mr. Justice Warburton: 'I marvel, Sir Walter, that you, being of such experience and wit, should stand upon this point; for many horse-stealers should escape if they may not be condemned without witnesses....'

Raleigh: 'Yet, by your favor, my Lord, the trial of fact at the common law is by jury and witnesses.'

Lord Chief Justice Popham: 'Nay, the trial at common law is by examination....'

Raleigh: 'I know not, my Lord, how you may conceive the law; but if you affirm it, it must be the law to all posterity.'

Lord Chief Justice Popham: 'Nay, we do not conceive the law; we know the law.'

Raleigh: 'Notwithstanding, my Lords, let me have this much for my life; for though the law may be as your Lordship has stated it, yet it is a strict and rigorous interpretation of the law. Now the King of England at his coronation swears to observe the equity and not the rigor of the law; and if ever we had a just and good King, it is His Majesty; and such doth he wish his ministers to be. Though, therefore, by the rigor and severity of the law this may be sufficient evidence without producing witnesses, yet your Lordships as ministers of the King are bound to administer the law in equity.'

Lord Chief Justice Popham: 'Equity must proceed from the King, you can only have justice from us.'

Coke: '... You have read the letter of the law, but understand it not. This dilemma of yours about two witnesses led you into treason; for you thought with yourself either Cobham must accuse or not accuse me; if he accuse me, yet he is but one witness; if he accuse me not, then I am clear....'

Then Coke read further from the evidence.

Coke: 'The peace pretended by Sir Walter Raleigh is merely

a jargon, for it is clear the money was for discontented persons. Now Raleigh was to have part of the money; therefore he was a discontented person, and therefore a traitor.'

Raleigh: 'Mr. Attorney, you have seemed to say much, but in truth nothing applies to me. Only you conclude that I must know of the plots because I was to have part of the money. But all you have said concerning this, I void by distinguishing the time when it was spoken; for it is true my Lord Cobham had speech with me about the money, and made me an offer; but how and when? Voluntarily, one day at dinner, sometime before Count Aremberg came over.

'For he and I being at his own board arguing violently, he for the peace, I against the peace, the Lord Cobham told me that when Count Aremberg came, he would yield such strong arguments for the peace as would satisfy any man, and withal told, as his fashion is to utter things easily, what great sums of money would be given to some Councillors for making the peace; and named my Lord Cecil and the Earl of Marre.

'I, answering, bade him take no such offer unto them, for, by God, they would hate him if he did offer it. Now if after this my Lord Cobham changed his mind as to the use to be made of the money, and, joining with the Lord Gray and the others, had any such treasonable intent as is alleged, what is that to me? They must answer it, not I. The offer of the money to me is nothing, for it was made me before Count Aremberg came; the offer made to the others was made afterwards. Let me be pinched to death with hot irons if I ever knew the money was to be bestowed on discontented persons.'

Lord Henry Howard: 'Allege me any ground or cause wherefore you gave ear to my Lord Cobham for receiving money in matters you had no business to deal with.'

Raleigh: 'Consider, my good Lord, I pray you, how could I stop my Lord Cobham's mouth?... It is strange to see how you press me still with my Lord Cobham, and yet will not produce him; it is not for gaining time or prolonging my life that I urge this; he is in the house hard by, and may soon be brought hither; let him be produced, and if he will yet accuse me or vow this confession of his, it shall convict me and ease you of further proof.'

Cecil: 'Sir Walter Raleigh presseth often that my Lord Cobham should be brought face to face; if he ask a thing of grace and favor, they must come from the one who can give them; but if he asks as a matter of law, then in order that we who sit as commissioners may be satisfied, I desire to hear the opinions of my Lords the Judges whether it may be done by law.'

The judges answered that by law it was not sufferable.

Raleigh: 'Good, my Lord, let my accuser come face to face and depose. Were the case but for a small copyhold, you would have witnesses or get proof to lead the jury to a verdict; and I am here for my life.'

Lord Chief Justice Popham: 'There must not such a gap be open for the destruction of the King as would be if we should grant this. You plead hard for yourself, but the laws plead as hard for the King...'

Coke then proceeded further with the deposition and read from a declaration of Watson that he had heard Cobham say to Brooke, 'There is no way of redress save only one, and that is to take away the King and his cubs, not leaving one alive.'

Raleigh: 'How barbarous. Do you bring the words of these hellish spiders against me? If they, like unnatural villains, use these words, shall I be charged with them?'

Coke: 'Thou art thyself a spider of Hell, for thou dost confess the King to be a most sweet and gracious Prince, and yet thou hast conspired against him.'

After a further reading of depositions, Coke again turned to Raleigh.

Coke: 'Now, Raleigh, answer all this.'

Raleigh: 'In all this, I find myself not touched, scarce named; and the course of proof is strained. If witnesses are to speak by relation of one another, by these means you have the life of any man in a week, and he may be massacred by mere hearsay....'

A deposition by Cobham had stated that he had from Raleigh a book which impugned James's title.

Raleigh: 'I will tell your Lordships how I came to it, and what little account I made of it. I had it out of a Privy Councillor's library long since. It was written about twenty-six years past by a lawyer and dedicated to a stranger.'

On being pressed to tell from what Privy Councillor, Raleigh said it was from Lord Burghley.

Cecil: 'You may remember that, after the death of my father, you desired the having of some cosmographical maps and books of that kind concerning discoveries of the Indian and West parts, which you thought were in my father's study and were not to be had in print. I allowed you a search, but if under color of this you extended the liberty I gave you to other things I meant not, you have abused my trust.... It was not hard to find a book of that kind there, for no book that touched the State, no, scarce a libel that in the Queen's time had been spread against the State, but might have been found in those papers, he being a Councillor of State... but you did me wrong, Sir Walter, to take it thence.'

Raleigh: 'My Lord, I had no purpose to take that book, but among other books and maps it seems it was cast in.... The scope of the book is to justify the late Queen's proceedings against the Queen of Scots. But I marvel it should now be urged as a matter so treasonable in me to have such books when it is well known that there comes out nothing in these times but I have it, and might as freely have it as any other.'

Coke: 'You were no Councillor of State, Sir Walter, nor I hope ever shall be.'

Cecil: 'Sir Walter Raleigh was truly no sworn Councillor of State, yet he hath been often called to consultations.'

Raleigh: 'How my Lord Cobham came by the book I know not, but I remember it lay upon my board at a time when he was with me.... I was laying out my loose papers and amongst them was this book, which I think my Lord took up....'

Lord Henry Howard: 'So Cobham had received it from Raleigh, and was then told it was against the King's title; but in his next examination he retracted what before he had said, and now said it contained nothing against the King's title, and that he took it from Raleigh's table while he was asleep.'

Coke: 'This shows that there was intelligence between Raleigh and Lord Cobham in the Tower...'

Then Coke read from the examination of Cobham, taken October 13, 1603, in which Cobham said Kemys came to him in the Tower with a letter from Raleigh to the effect that he

need not be dismayed because one witness could not hurt him. Raleigh denied writing any such letter, and said Kemys had been a close prisoner for eighteen weeks, threatened with the rack to make him confess, and that under duress he had made the alleged confession.

Lord Henry Howard: 'No circumstance moves me more than this. Kemys was never on the rack, for the King gave charge that no rigor should be used.'

Commissioners: 'We protest before God there was no such matter intended to our knowledge.'

Raleigh: 'Was not the keeper of the rack sent for and he threatened with it?'

Sir W. Wade: 'When Mr. Solicitor and myself examined Kemys, we told him he deserved the rack, but did not threaten him with it.'

Raleigh: 'I have already often urged the producing of my Lord Cobham, but it is still denied me. I appeal now once more to your Lordships in this. My Lord Cobham is the only one that hath accused me, for all the treasons urged upon me here are by reflection from him. It is now clear that he hath since retracted; therefore, since his accusation is recalled by himself, let him now by word of mouth conflict or condemn me.'

'Campion, the Jesuit, was not denied to have his accusers face to face, and if that be true which hath been so labored all this day, that I have been the setter on of my Lord Cobham, his instigator, to have infused these treasons into him, as hath been said, then have I been the efficient cause of his destruction; all his houses, lands, and goods, and all he hath, are lost by me; against whom, then, should he seek revenge but upon me? And the world knoweth him as revengeful of nature as any man living. Besides, a dying man is presumed to speak truth; now Cobham is absolutely in the King's mercy; to excuse me cannot avail him; by accusing me he may hope for favor. It is you, then, Mr. Attorney, that should press his testimony, and I ought to fear his producing if all that be true which you have alleged.'

Lord Henry Howard: 'Sir Walter, you have heard that it cannot be granted; pray importune us no longer.'

Raleigh: 'Nay, my Lord, it toucheth my life, which I value at as high a rate as your Lordship does yours.'

Cecil: '... I would know of my Lords the Judges if it might not stand with the order of our proceedings to take a further time and know His Majesty's pleasure, in that it is desired.'

The judges resolved that the proceedings must go on.

Dyer, a pilot, then testified that, 'Being at Lisbon, there came to me a Portugal gentleman who asked me how the King of England did, and whether he was crowned? I answered that I hoped our noble King was well and crowned by this, but the time was not come when I came from the coast for Spain. No, said he, your King shall never be crowned, for Don Cobham and Don Raleigh will cut his throat before he come to be crowned.'

Raleigh: 'This is the saying of some wild Jesuit or beggarly priest, but what proof is it against me? You, gentlemen of the jury, I pray you consider that there is no case so weak, no title so bad, but the King's Learned Counsel, by wit and learning, can maintain it for good, and that against men of their own profession; much more can they do so with me, who never studied law till I came into the Tower of London; who have been all my life practiced in other affairs, and am weak of memory and feeble of health, as you may see; I beseech you, therefore, consider their abilities and my weaknesses.

'For all that is said to the contrary, I see my only accuser is the Lord Cobham, who with tears hath lamented his false accusing me and repented of it as if it had been a horrible murder. You had many shows of proof, of turning but to presumptions, and those not such as the law allows, for binding presumptions ought to arise out of preceding matters and not from subsequent.... Remember what Saint Augustine sayeth: "So judge as if you were about to be judged yourself, for in the end there is but one judge and one tribunal for all men." That Judge must judge both me and you; before that tribunal both you and I must stand. Now, if you yourselves would like to be hazarded in your lives, despoiled in your posterities, your lands, goods, and all you have, confiscated, your wives, children, and servants left crying to the world, if you would be content all this should befall you upon a trial by suspicions and presumptions, upon an accusation not subscribed by your accuser, without the open testimony of a single witness, then so judge me as you would yourselves be judged.'

Then Serjeant Philips addressed the jury and said that Raleigh had no proof for his acquittal, but used only his bare denial.

Raleigh: '... Why would you have me bring testimony? Where there is nothing to charge me, what should I discharge myself of?...

Then Raleigh turned to Coke.

Raleigh: 'Mr. Attorney, have you done?'

Coke: 'Yes, if you have no more to say.'

Raleigh: 'If you have done, then I have some more to say.'

Coke: 'Nay, I will have the last word for the King.'

Raleigh: 'Nay, I will have the last word for my life.'

Coke: 'Go to, I will lay thee upon thy back for the confidentest traitor that ever came to the bar.'

Cecil: 'Be not so impatient, good Mr. Attorney, give him leave to speak.'

Coke: 'I am the King's sworn servant and must speak; if I may not be patiently heard, you discourage the King's counsel and encourage traitors.'

And thereupon Coke sat down, in a chafe, and would not speak further until the Commissioners urged and entreated him.

Coke: 'Thou art the most vile and execrable traitor that ever lived.'

Raleigh: 'You speak indiscreetly, uncivilly, and barbarously.'

Coke: 'Thou art an odious fellow; thy name is hateful to all the realm of England for thy pride.'

Raleigh: 'It will go near to prove a measuring stick between you and me, Mr. Attorney.'

Then Coke read from Cobham's letter to the Lords, dated the day previously:

I have thought it fit, in duty to my Sovereign, and in discharge of my conscience, to set this down to your Lordships, wherein I protest upon my soul, to write nothing but what is true, for I am not ignorant of my present condition, and now to dissemble with God is no time. Sir Walter Raleigh four nights before my coming from the Tower, caused a letter enclosed in an apple to be thrown in at my chamber window, desiring me to set down under my hand and send him an acknowledgment that I had wronged him, and renouncing what I had formerly accused him of. His first letter I

made no answer to. The next day he wrote another, praying me for God's sake, if I pitied him, his wife, and children, that I would answer him in the points he set down, informing me that the judges had met at Mr. Attorney's house, and putting me in hope that the proceedings against me would be stayed. Upon this I wrote him a letter as he desired. I since have thought he went about only to clear himself by betraying me. Whereupon I have resolved to set down the truth, and under my hand to retract what he so cunningly got from me, craving humble pardon of His Majesty and your Lordships for my double dealing. At the first coming of Count AreMBERG, RALEGH persuaded me to deal with him to get him a pension of 1500*l.* from Spain for intelligence, and he would always tell and advertise what was intended by England against Spain, the Low Countries, or the Indies. And coming from Greenwich one night, he told me what was agreed upon between the King and the Low Countries, that I should impart it to Count AreMBERG. But for this motion for 1500*l.* for intelligence I had never dealt with Count AreMBERG. . . . In his last letter he advised me that I should not be overtaken by confessing to any preacher, as the Earl of Essex did, for the King would better allow my constant denial than my accusing any other person, which would but add matter to my former offense.

Coke: 'Oh, abominable atheist: He counsels him not to confess to preachers, as the Earl of Essex did; that noble Earl died, indeed, for his offense, but he died the child of God, and God called him at his death. Thou wast by when he died. Wolves and base bears press upon dying men.'

This confession of Cobham startled every one, and Coke sensed the change of feeling.

Coke: 'Now, RALEGH, if thou hast the grace, humble thyself to the King and confess thy treasons.'

RALEGH, taken by surprise, was dismayed. After a moment, however, he recovered.

RALEGH: 'I pray you hear me a word. You have heard a strange tale of a strange man; you shall see how many souls this Cobham hath, and the King shall judge by our deaths which of us is the perfidious man. Before my Lord Cobham's coming from the Tower, I was advised by some of my friends to get a confession from him; therefore, I wrote him there, "you or I must go to trial, if I first, then your accusation is the only accusation, is the only evidence, against me"; therefore, it was not ill of me to beg of him to say the truth. But his first letter was not to my contenting. I wrote a second, and

then he wrote me a very good letter. It is true I got a poor fellow in the Tower to cast up an apple with a letter in it, at Lord Cobham's window....'

Lord Chief Justice Popham: 'But what say you to the pension of 1500*l*.?'

Raleigh: 'I say that Cobham is a poor, silly, base, dishonorable soul.'

Coke: 'Is he base? I return it into your throat on his behalf; but for that he had been a good subject.'

Lord Chief Justice Popham: 'I perceive you were not so clear a man as you have protested all this while, for you should have discovered this matter to the King.'

Raleigh: 'Hear, now, I pray, what Cobham hath written to me.'

Coke would not have the letter read, saying it was unfairly obtained from Cobham. Cecil requested that it be heard.

Coke: 'My Lord Cecil, mar not a good cause.'

Cecil: 'Mr. Attorney, you are more peremptory than honest. You must not come here to show me what to do.'

Raleigh sensed where sympathy for himself was strongest, and turned to Cecil.

Raleigh: 'I pray my Lord Cecil to read the letter, as he knoweth my Lord Cobham's hand.'

So Cecil read:

Now that the arraignment draws near, not knowing which should be first, I or you, to clear my conscience, satisfy the world with truth, and free myself from the cry of blood, I protest upon my soul and before God and his angels, I never had conference with you in any treason, nor was ever moved by you to the things I heretofore accused you of, and for anything I know you are as innocent and as clear from any treasons against the King as is any subject alive. Therefore, I wash my hands, and pronounce with Daniel, 'Purus sum a sanguine hujus.' God so deal with me and have mercy on my soul, as this is true.

Raleigh: 'As to that which is said of the 1500*l*. a year pension, for intelligence, I cannot deny the offer, but it was never my purpose to accept it; it was my fault I did conceal it, and this fault of concealing I acknowledge; but for attempting or inspiring any treason against the King or the State, I still deny it to the death, and it can never be proved against me.'

The reason Coke and Raleigh had for insisting on the last word is apparent. Each had his letter from Cobham on which each relied for final effect with the jury. Though the letter Coke had came as an overwhelming surprise to Raleigh, Coke knew, or could readily surmise, that Raleigh had a letter. It would have been more dramatic to let him read it and then destroy its effect. However, the subsequent letter which Coke had, even when read first, showing the manner in which Raleigh had obtained his letter, deprived it of all force, and it dropped ineffective as a spent bullet. As soon as Coke had read his letter of Cobham's, Raleigh showed that he knew he had lost the day, saying, 'The King shall judge by our deaths.'

The jury retired, and in less than fifteen minutes returned with a verdict of guilty of treason.

The King's Serjeant called for judgment, and Raleigh was asked what he had to say why judgment should not be given against him. He said:

... I never was privy to his practices with Spain, nor to the surprising treason, nor to the conferences with Count AreMBERG. True it is, I was offered that sum of 1500*l.* a year for intelligence, but embraced it not. My only fault was that I disclosed it not. If the King's mercy be greater than my offense, I shall take it thankfully; if otherwise, I must be contented, and if I die, I recommend my poor wife and child of tender years to His Majesty's compassion; but if of the King's grace I may live, I shall serve him and pray for him during my life.

Lord Chief Justice Popham:

Sir Walter Raleigh, I am sorry to see this fallen upon you this day; you have always been taken for a wise man, and I cannot but marvel to see that a man of your wit, as this day you have proved it, could be entangled with so many treasons.

The Court delivered the sentence of death.

Fame of Raleigh's defense spread through London and the land. The man who had been pelted on his way to trial became overnight a national hero.

Let an observer of the proceedings speak of the impression they made on him: Chamberlain, writing to Carlton, November 27, 1603, said:

Of the King's Counsel none were employed... but the Attorney [i.e., Coke] Heath and Philips; and in effect, none but the Attor-

ney. Sir Walter Raleigh served for a whole act and played all the parts himself. . . . After sentence given, his request was to have his answers related to the King, and pardon begged: of which if there were no hope, then that Cobham might die first [i.e., he hoped that Cobham in a last confession before execution would clear him]. He answered with that temper, wit, learning, courage, and judgment that, save that it went with the hazard of his life, it was the happiest day that ever he spent. And so well he shifted all advantages that were taken against him, that were not fama malum gravius quam res, and an ill name half-hanged, in the opinion of all men he had been acquitted. The two first that brought the news to the King were Roger Ashton, and a Scotchman, whereof one affirmed that never any man spoke so well in times past, nor would do in the world to come: and the other said that whereas, when he saw him first, he was so led with the common hatred, that he would have gone a hundred miles to have seen him hanged, he would, ere he parted, have gone a thousand to have saved his life. In one word, never was a man so hated and so popular, in so short a time.

Brooke, Markham, Copeley, Brooksby, Watson, and Clarke had been tried and convicted; and three days after that trial, Cobham was tried, and then Gray, and both were convicted. On November 29, the priests Watson and Clarke were executed, and Brooke, a week later. Markham, Copeley, and Brooksby were ordered to quit the kingdom.

This left Raleigh, Cobham, and Gray. Warrant was issued for their execution on December 11. On the 10th, however, the King reprieved all three, but held them imprisoned in the Tower.

XIX

FROM the time of the invention of explosive powder by the Chinese for their fireworks, its application to guns by the Tartars under Genghis Khan, and its subsequent development by the benign and devout Schwarz in the cloistered quiet of his monastery, this potentially diabolical discovery has been used by impotent minorities to express their discontent with an existing order. An endeavor at such a use of the sinister grandeur of this agency was made early in the reign of James I, while Coke was still Attorney-General, and gave him six months of arduous lawyer's labor.

A brief historical review must be made to show the causes

back of the attempt. After the issuance by Pius V of his bull of excommunication against Elizabeth, and his letter to the Catholics of England, absolving them from allegiance to a heretic Queen, the English Parliament passed laws directed against the Papacy's political intrigues in England; and these laws not only forbade Catholics to exercise the rites of their own faith, but compelled them to attend the services of the Established Church, which, if they were conscientious religionists, they were bound to abhor as heretical. For failure to attend, the laws imposed on the delinquent a penalty of twenty pounds for each lunar month during which the absence continued. One convicted of absenting himself from the politically ordained form of worship was termed a Popish recusant, and might be committed to prison without bail until he conformed and made submission; and if he failed to conform within three months after conviction, he had to abjure the realm, that is, take an oath with many religious solemnities to depart from England and not to return without the King's license; and after taking this oath, he must repair immediately, with the Cross in his hands, to some seaport, and promptly embark for foreign parts. If he refused either to submit or to leave the realm, he was guilty of a felony, for which he might suffer death. And benefit of clergy could not be pleaded.

When James came to the English throne, it was still less than seventy-five years since the English breach with Rome, and less than forty-five since the death of Mary under whom the Catholics had felt close to the restoration of the old Church. Those who refused to conform, and the far greater number who conformed only under coercion, were numerous enough to be a real menace to the State as established, until the general abhorrence of the events to be told on the ensuing pages substantially reduced the danger.

However necessary these measures may have been for the safety of England, and though the laws were not at all times strictly enforced, they placed the Catholics at the mercy of the Established Church. Furthermore, there were numerous instances of severe enforcement, and many English families were suffering and smarting under the penalties imposed.

The case of Sir Thomas Tresham, father of Francis Tresham, who will come prominently into the narrative to follow,

affords an illustration. He belonged to an old family of Protestants in Northamptonshire, and Elizabeth had knighted him in 1577; but in 1580 he became a Catholic convert as a result of the preaching of Campion and Parsons in the Catholic revival of the period. From that time until his death in 1605, he was constantly persecuted. In 1580, after Campion's apprehension, he was arrested and sent to the Fleet on suspicion of having harbored the missionary. Upon his refusal to swear before the Privy Council that Campion had not been at his house, he was prosecuted in the Court of Star Chamber, sentenced to pay a heavy fine, and to imprisonment in the Fleet until he swore as required. Under this sentence, Sir Thomas remained in prison for several years, then was released during one of the intervals of leniency. Thereafter, he was repeatedly imprisoned on the ground of his religion, and for more than twenty years, he regularly paid the fine of 20*l.* per lunar month, or 260*l.* per year as a Popish recusant. In the money values of the times, such a sum was a heavy burden even to a rich man.

Edward Rookwood, of Euston Hall, Suffolk, a cousin of Ambrose Rookwood, who will be frequently mentioned in these pages, presents another of the many instances of harshness. Committed to the prison at Norwich for obstinate Papacy in 1588, he finally died in jail in 1598.

And if the lot of the Catholic laity was almost intolerable, that of the Catholic priests was one of wretchedness and greater danger. Forbidden to come into the country, those already there were required to leave on penalty of death. Some, nevertheless, remained in England, lived in constant concealment and terror, and wandered from one Catholic house to another by unfrequented roads. Sometimes they abode in disguise in the taverns, ready to flee at a moment's warning; at other times, they lay in the cover of the woods, supplied with food by sympathetic co-religionists. The more daring of the wealthier of their scattered flocks afforded their harried ministrants a shelter and a place to perform their religious functions in secret rooms, behind doors concealed in paneling, with hidden stairways leading to tunnels of escape — houses which remained to a happier day with an atmosphere of mystery and romance.

Since this was the state of the Catholics in England at the end of Elizabeth's reign, they naturally looked forward with hope to the new King. James had been born of Catholic parents, had been baptized by a Catholic archbishop, and his mother had been executed at the hands of the Protestants. With such a background he would, they felt sure, be favorably inclined towards them. They therefore sent a messenger to him in Scotland to ascertain his attitude, and received assurance of toleration. In July, 1603, after James had come to England, Sir Thomas Tresham and certain well-known Catholic nobles were called to the Privy Council by order of the King, and were assured that it was His Majesty's intention to exonerate English Catholics from the fine of twenty pounds per month, 'so long as they kept themselves upright and civil.' And the Council desired that the King's gracious intentions in this respect be made known to the Catholics generally.

The fines were actually suspended for about two years, and the record of the sums paid into the Exchequer reflects the fact. In the last year of Elizabeth's reign, the recusancy fines brought in 10,333*l.*; in the first year of James, 300*l.*; and in the second year of James, 200*l.* The appointment of Henry Howard, generally believed a Catholic, to a seat in the Privy Council was taken as a further indication of favor; though James himself said the appointment was not made out of a spirit of toleration, but that by this one tame duck he hoped he would take many wild ones — a sample of Jacobean kingcraft.

In the summer of 1603, however, on the discovery of the Priests' Plot of Watson and Clarke, James became wary, and the country more insistent on the enforcement of the laws against recusancy. In February, 1604, the King issued a proclamation requiring all Jesuits and other priests to depart the realm not later than March 19; and the Parliament of 1604 passed an act directing that two thirds of the estates of all recusants be seized in satisfaction of the fine of twenty pounds per month imposed by the statute of Elizabeth. A commission was immediately appointed to enforce the act. Fines which had been permitted to accumulate for two years were suddenly demanded in full, and many of the recusants were beggared by being called upon to pay the heavy arrears. To

make matters worse from the Catholic viewpoint, James assigned to various Scotch followers, pensions payable out of the very fines, and the favored ones demanded their pound of flesh with the utmost greediness. Parliament passed other acts which further embittered those who remained loyal to the old religion.

XX

So matters stood with the Catholics in England in the latter part of 1605. On Saturday, October 26, of that year, Lord Monteagle, a Catholic nobleman, was seated at dinner with some friends at his house in Hoxton, when one of his servants brought a letter which he had been requested to deliver personally to his lordship by a man he had met on the street, but did not know, whose features he could not distinguish in the darkness of the winter night. Monteagle took the letter, read it, and handed it to a servant, requesting him to read it aloud. The letter was not signed, and ran as follows:

MY LORD: Out of the love I bear to some of your friends I have a care of your preservation. Therefore, I would advise you, as tender of your life, to devise some excuse to shift of your attendance at this Parliament; for God and man have concurred to punish the wickedness of this time. And think not so slightly of this advertisement, but retire yourself into your country, where you may expect the event in safety, for though there be no appearance of danger, yet I say they shall receive a terrible blow in this Parliament, and yet they shall not see who hurts them. This counsel is not to be contemned, because it may do you good and can do you no harm, for the danger is past as soon as you have burned the letter: and I hope God will give you the grace to make good use of it, to whose holy protection I commend you.

The letter startled and puzzled Monteagle and his guests, and after some talk they decided to go immediately to Whitehall to see Robert Cecil, Lord Salisbury, the principal Secretary of State, and lay the matter before him. They found Salisbury ready to sit down to dinner with his guests, the Earls of Nottingham, Suffolk, Worcester, and Northampton. Monteagle and Salisbury went into another room, where Salisbury read the letter. He said that he had heard vague rumors of discontent among the Catholics, and would make further inquiries. Then he called in the Earl of Suffolk, and

they re-read the letter. Monteagle left, and Salisbury communicated to his guests the contents of the message.

The King at the time was at Royston, and not expected back in London until Sunday, November 3. Upon his return, Salisbury showed him the letter, and they reached the conclusion that some mischief was intended by means of gunpowder. The King ordered the Earl of Suffolk, as Lord Chamberlain charged with the upkeep of buildings, to proceed on the following day, November 4, to examine Parliament House and all the adjoining structures. Suffolk, partly to avoid betraying the suspicions of the authorities, and partly also because he was fearful of a hoax, and that he would be the laughing-stock of London, gave out that he was seeking for some stuff of the King's. In the course of his search, he came to the house of one Whynneard, adjoining the Parliament buildings, and, on looking into the cellar, he saw great piles of coal and fagots, more than ordinarily would be needed. He inquired of the man in charge of the house to whom they belonged, and was told that Sir Thomas Percy, one of His Majesty's pensioners, had leased the house as a town residence for his wife and himself while he was required to be in London on duty at the Court. Suffolk proceeded with his search, but found nothing further. He returned to the King and told what he had done.

Parliament was to meet on the following day, November 5, and the King, not satisfied with the report, ordered a further search. Suffolk, apparently still believing he might be the victim of a hoax, appointed Sir Thomas Knyvett, a magistrate of the City of London, to make the second investigation. About eleven o'clock on the night of November 4, Sir Thomas proceeded with a body of men to Whynneard's house. At the door they met a man just stepping out. They inquired of him who he was, and he answered that he was John Johnson, a servant of Sir Thomas Percy, the lessee of the house. He was detained.

Sir Thomas proceeded into the cellar, had the coal and wood shifted, and at the bottom of the pile found thirty-six casks filled with gunpowder, a watch, a dark lantern, and some slow matches. Thereupon he had Johnson bound hand and foot and immediately taken to the lodging of Salisbury, who



FIRST EARL OF SALISBURY
National Portrait Gallery, London

summoned such of the Privy Council as could be reached at that hour to the King's bedchamber, to which Salisbury and Sir Thomas went and had the prisoner taken with them. James, when apprised of the state of affairs, gave thanks to God for his deliverance, and directed the Lord Mayor of the City to set a watch for the prevention of any outbreak. Then, in the King's bedchamber, far into the night, the examination of Johnson continued. Asked who he was, he said he was John Johnson, a servant of Sir Thomas Percy. When the examiners inquired who his accomplices were, he answered that he could not resolve to accuse any.

During the entire examination, he was cool and brazen. It was after midnight, and the beginning of the day for the opening of the session before he said that when the King had come to the Parliament House that day, and the Parliament was sitting, he meant to have fired the match and fled for his own safety before the powder had taken fire. Asked by the King how he could conspire against the innocent royal children and so many other innocent souls, he answered, 'dangerous diseases require a desperate remedy.' To some of the Scotch Lords who questioned him, he said that one of his objects was to blow them back to Scotland. When the examination was concluded, the prisoner was removed to the Tower, but nothing had yet been ascertained as to his accomplices.

The next morning, the story of the plot raced through the City. Suspicions of the people naturally ran against the Spaniards, and if measures had not been taken to protect the Spanish Ambassador, he might have fared badly. A search was made for Sir Thomas Percy, but he could not be found. The King then ordered a further examination of the prisoner in the Tower, with authority to the examiners to apply torture if he refused to answer: and the business then became the affair of Coke. For all his rasping tongue, he could not reduce the prisoner to making any disclosure of his accomplices.

On the following day, November 7, in a way not entirely clear, the Government learned the names of some of the conspirators: Sir Thomas Percy, Robert Catesby, Robert and Christopher Wright, Thomas and Robert Winter, Ambrose Rookwood, John Grant, Sir Everard Digby. All these men were proclaimed. Then Coke returned to the Tower, and when

the torment of his tongue failed to gain further information, at last resorted to torture, under the agony of which the prisoner confessed that his name was not John Johnson, but that he was Guy Fawkes, an Englishman who had long been resident on the Continent.

Sheriffs of all the counties were on the lookout for the outlaws. Catesby made his home with his mother at Ashby. Search was directed to that place. The trail led first to Dunchurch, thence to Coughton, and to Norbrook. By Thursday, November 7, Sir Richard Walsh, Sheriff of Worcestershire, and his posse, were rapidly gaining on the fleeing conspirators. About the middle of the next day, Friday, November 8, Sir Richard caught up with the plotters, who had entrenched themselves in a house belonging to Stephen Littleton at Holbeach. The Sheriff's forces surrounded the house, and the Sheriff commanded the rebels to surrender.

On their refusal, Sir Richard ordered the house set on fire, and an assault on the gates of the courtyard. When Thomas Winter attempted to cross the yard, the bolt of a cross-bow tore through his arm. Catesby, who was standing at one of the doors, called to him, 'Stand by me, Tom, and we'll die together.' The next two shots from the Sheriff's forces mortally wounded both the Wrights. Catesby and Percy were standing back to back, and a single bullet bored through the bodies of both. Catesby fell dying, but managed to crawl into the house, where he seized an image of the Blessed Virgin, clasped it in his arms, and expired. With the death of Catesby, resistance vanished, and the Sheriff's forces took the others prisoners.

Percy died of his wounds the next day. Rookwood was found to have been severely wounded. One of the band, Robert Keyes, was arrested on the same day in Warwickshire. Thomas Bates, Catesby's servant, had escaped from Holbeach, but was arrested a few days later in Staffordshire. By November 15, all the prisoners were in the Tower; and on that day, Francis Tresham was arrested and committed. Robert Winter and Stephen Littleton had escaped from Holbeach, and for some few months eluded their pursuers. They were finally captured in the house of Humphrey Littleton.

With the capture of the principal conspirators at Holbeach,

the country, which had been tense with the possibility of a Catholic uprising, felt a great sense of relief; and James issued a proclamation that on Sunday, November 10, a solemn thanksgiving should be offered in all the churches for the deliverance of the nation from the plot.

The arduous task of examining the prisoners began. Though officially assigned to the commissioners appointed by the King, as a matter of fact, Attorney-General Coke, Solicitor-General Sir Thomas Fleming, Bacon, and Sir John Popham, the Lord Chief Justice, actually did all of the work.

XXI

THE examinations of the various conspirators and other witnesses, pieced together, gave the story of the plot. It had its origin as far back as the time of Elizabeth. Towards the end of her reign, Robert Catesby, who, like Tresham, had been implicated in the Essex conspiracy, and had been fined 4500 marks, of which 1200 had been assigned to Bacon, had dispatched Thomas Winter, accompanied by Father Greenway, a Jesuit, to Spain, to urge Philip to send an invading force into England. Philip agreed to land his army at Milford Haven in the spring of 1605, and to furnish the English Catholics with 100,000 crowns. They were to supply some two thousand horse. Then the Queen died. James showed his forbearance to the Catholics, he appeared disposed towards peace with Spain; and, in view of the changed circumstances, it seemed doubtful whether Philip would keep his promises. So Catesby sent Christopher Wright to Spain to ascertain anew if intervention might be expected. Wright immediately reported that there was no longer any hope from that quarter.

On receiving this information, Catesby brooded over the wrongs of the Catholics, and finally conceived the idea of blowing up the Parliament House at the opening of the session, when the King, all of the Lords Spiritual and Temporal, and the Commons would be present. He felt this action would be just, because all the ills of the Catholics had come from Parliament. He planned to establish a Catholic Government. Catesby had a house at Lambeth, and one day Thomas Percy came to him and complained bitterly that James had hoodwinked him.

Sent to Scotland immediately after the Queen's death to ascertain James's attitude towards the Catholics, Percy had returned to England with assurances of James's favorable intentions and urged the English Catholics to support the Scotch King's title. When James did not immediately repeal the penal laws against them, Percy felt deeply distressed, felt that his friends regarded him with suspicion, or with contempt for having been the easy dupe of James.

To Catesby he said that there was no course open for him but to kill the King. 'No, Tom,' Catesby answered, 'thou shalt not adventure to small purpose; but if thou wilt be a traitor, thou shalt be so to some great advantage'; added that he was thinking of a better way, and would shortly let Percy know what it was. A few weeks later, when James suspended collection of the recusancy fines, since the outlook appeared brighter to the Catholics, Catesby's plan of blowing up the Parliament lay dormant.

When the situation turned for the worse in February, 1604, Catesby resolved anew to execute his plan. A few days after the proclamation banishing the priests, Thomas Winter received from Catesby a letter asking him to come to London on important business. Winter answered that he was not well, and could not come. A second letter from Catesby, more urgent than the first, brought Winter to London, and he met Catesby at his quarters in Lambeth. John Wright was there, and Catesby disclosed his plan. Winter hesitated; he said in case of failure 'the scandal would be so great which the Catholic religion might thereby sustain that not only our enemies but our friends also would with good reason condemn us'; but he finally agreed to join the plot.

Then Catesby, probably to satisfy Winter by the result that no other way was feasible, suggested that Winter go to Flanders to interview the Constable of Castile, who was then on his way to England to negotiate for peace with Spain, and to attempt to secure the Constable's intervention with the King on behalf of the English Catholics, with a view to procuring provisions for them in the proposed treaty of peace, particularly a repeal of the penal laws. If not successful in obtaining satisfactory assurances from the Constable, Winter was to engage the services of a certain Englishman then in Flanders, who had a reputation for skill and daring — Guy Fawkes.

Winter left England for Flanders in April, 1604, saw the Constable, and found his promises too vague for the conspirators to rely upon assistance from the Spanish Government. He then sought out Guy Fawkes, whom he induced to accompany him back to England. Up to this point, Percy seems to have been ignorant of the entire scheme. One night, shortly after Winter's return to England, Fawkes, Catesby, and Winter were at Catesby's house. Percy came in and talked about the woes of the Catholics. 'Shall we always, gentlemen, talk and never do anything?' he exclaimed. Catesby took him aside, told him he had a plan for Catholic relief, and then proposed to all of them that they take an oath of secrecy before particulars of the plan were disclosed.

Five were now in the plot: Catesby, Thomas Winter, John Wright, Guy Fawkes, and Thomas Percy. A few days after this conversation they met by appointment at a house in the field near Saint Clement's Inn, where each of them took an oath of secrecy. Immediately thereafter Catesby explained the project to them and each approved it. All then went to an upper room of the same house where they heard mass by Father Gerard, a Jesuit missionary, and received the sacrament in confirmation of their vow. The conspirators claimed that they had not disclosed the secret to the priest.

Catesby then located the house owned by Whyrneard, Keeper of the King's Wardrobe, which immediately adjoined the Parliament building; and Percy procured from the owner a lease of the dwelling, dated May 24, 1604. It was proposed that from the cellar of this house a mine should be made under the House of Lords, a quantity of gunpowder placed in the mine, and fired on the opening day of Parliament, when the King, the Lords Spiritual and Temporal, and the Commons would be assembled in one hall.

Since Fawkes was unknown in London, it was arranged that he should keep the keys, take the name of John Johnson, and hold himself out to be Sir Thomas Percy's servant. Meantime, however, Parliament had been adjourned to February 7, 1605, and thereupon the conspirators agreed to depart into the country, and return to the house in November. Catesby's dwelling at Lambeth was used to store the timber necessary in the mining operation and the gunpowder. Custody of the

Lambeth house was given to Robert Keyes, who was sworn in the same way as the others.

When the conspirators met in November, they found that the Whyrneard house had been taken over by the commissioners for the proposed union between England and Scotland. So they had to defer their operations for about a month; but on December 11, they met at the house, provided with spades and other tools for excavation. They dug up to the Parliament building wall, and found that it was heavy masonry some nine feet thick. They initiated Christopher Wright, and Keyes, brought from Lambeth, both to assist in the work of excavation. Fawkes acted as guard to warn of the approach of strangers. The conspirators disposed of the earth and rubbish at night. In this way they toiled until Christmas Eve, and had worked about halfway through the wall. Then they learned that Parliament had again been prorogued from February 7 to October 3, 1605, and they ceased work for the time.

In view of the difficulties of the task, they decided to get additional help. They sent for John Grant and Robert Winter, administered the oath to them, and duly admitted them as members of the band. About this time, too, Thomas Bates, a servant of Catesby, had become suspicious, and the conspirators had to take him into the plot.

They resumed their mining operations early in February. One day, while working on the wall, they heard a rushing noise in a direction nearly above their heads. At first they thought they had been discovered, but upon investigation Fawkes found that the noise came from a cellar rented by one Bright, who was selling off his coal. Fawkes looked over Bright's cellar and came to the conclusion that it exactly suited their purpose. They thereupon leased it, abandoned their old mine, transferred some twenty barrels of gunpowder to the new cellar, and placed large stones and iron bars across the barrels, 'to make the breach the greater,' as Fawkes explained. They covered this pile with an overlay of coal and fagots. Everything was ready, and since the reassembly of Parliament was still some months distant, the conspirators decided to separate. Catesby proposed that they attempt to obtain foreign assistance through Sir William Stanley and Hugh Owen, who were in Flanders, and they dispatched

Fawkes shortly before Easter to confer with them. He returned in August without having seen Stanley, who was in Spain, but having imparted the secret to Owen.

In September they sent Sir Edmund Baynham on a mission to the Pope. Baynham had taken part in the Essex Rebellion, had been prosecuted more than once in the Court of Star Chamber, and probably knew about the plot. When news of the explosion should arrive at Rome, he would be there prepared to negotiate with the Pope on behalf of the conspirators.

Soon after Fawkes's return, Parliament was prorogued from October 3 to November 5. These prorogations made the conspirators fearful that their plan had been discovered or suspected. So they sent Thomas Winter, who had access to the Court, to observe and report upon the demeanor of the Commissioners by whom Parliament was prorogued. He saw nothing that indicated knowledge or suspicion of their plot.

The conspirators then made plans for the insurrection which was to follow the explosion. Horses, arms, and ammunition had been purchased and distributed in the houses of the conspirators in the Midland counties, principally in Catesby's place at Ashby. Since such action could not be carried out secretly, Catesby informed his friends that he was about to raise a troop of three hundred horse under the levy of volunteers which the Spanish Ambassador was then making for service with the Archduke in Flanders. As their own means were insufficient for further purchases, they agreed to add several wealthy persons to their number. They selected three: Sir Everard Digby, Ambrose Rookwood, and Francis Tresham.

Digby, at this time about twenty-four years old, who was a man of considerable fortune, agreed to give to the cause 1500*l.*, a number of horses, and a quantity of ammunition. Ambrose Rookwood was about twenty-seven, head of one of the most ancient and opulent families in England, a friend of Digby, and attached to him by their religious enthusiasm. Tresham had been engaged in several plots, had been conspicuously active in the Essex Rebellion, as an incident of which he had been one of the guard of the Lord Keeper, the Lord Chief Justice, the Earl of Worcester, and Sir William Knollys when

they were detained at Essex House while Essex went into the city. On that occasion, speaking to the Lord Keeper, Tresham said that he had stayed for a motion in the Chancery, and hoped his Lordship was now at good leisure to hear him. This insolence had incensed the Queen; and his discharge from custody had been obtained only after great effort by his friends, and at a cost to his father of several thousand pounds.

Tresham agreed to furnish 2000*l.* for the Gunpowder Plot. His associates, however, suspected him of treachery, and believed that he had written and sent the mysterious letter to Lord Monteaule. The circumstances seem to indicate a reasonable probability for their belief.

With the money obtained from Digby, Rookwood, and Tresham, the conspirators laid in more powder and bullets, and purchased more horses, all for the ostensible purpose of service with the Archduke in Flanders. They distributed the additional horses and ammunition, as they had the first, among their residences in the Midland counties, and arranged to gather at Dunchurch after the explosion. Many of those enlisting in the company, said to be for duty in Flanders, did not know the real purpose of the troop. All, however, were invited to meet at Dunchurch about November 5, for a three or four days' hunt; and under this guise of a hunting party, the conspirators hoped to gather their forces without comment.

Immediately on receiving news that the explosion had taken place, Digby was to seize the Princess Elizabeth at the house of Lord Harrington, near Coventry. She was to be proclaimed Queen, in the event of the death of Prince Charles and Prince Henry as a result of the explosion, or if the other conspirators had been unable to obtain the person of either of these princes. They planned to appoint a regent during the minority of the new sovereign.

Fawkes was to fire the mine, using a slow match which would give him about fifteen minutes to make his escape. He was to embark immediately on board a vessel in the Thames and to proceed to Flanders. Who should be saved was a question much discussed. Lords Stourton and Monteaule, both Catholics, had married sisters of Tresham, and he was friendly with both. Therefore, he anxiously desired that these

nobles should be warned to absent themselves from Parliament. Robert Keyes was concerned for the safety of Lord Mordaunt; Percy for Northumberland; and all wished to save the Earl of Arundel. They finally agreed to give no express notice, but that each should persuade his friends on general grounds to absent themselves, pointing out how little the few Catholics could do against the great majority of Protestants in Parliament.

XXII

It was at the time of the discussion of saving Catholics from the explosion that the mysterious letter had been delivered to Lord Mounteagle, Saturday, October 26, 1605. On Sunday, Thomas Ward, Mounteagle's servant, who had been asked to read the letter aloud, warned Thomas Winter that the plot had been discovered. On Monday, October 28, Winter told Catesby of the discovery; but the conspirators did nothing until Wednesday, October 30, when they sent Fawkes to the cellar to see if any one had entered it. Fawkes had left secret marks on the door from which he could tell whether it had been opened. On his return he reported that these marks had not been disturbed.

Then the conspirators grew fearful of treachery among their own number, and the suspicion of all fastened on Tresham. Winter summoned Tresham to meet him and Catesby. It was agreed that the others should be present, and that if Tresham confessed betraying the secret, or if from his demeanor the others were satisfied that he had betrayed it, they would run a poniard through him. When Tresham came, however, he swore so convincingly that he had not been guilty of violating his oath that Catesby and Winter were inclined to believe him.

On Sunday, November 3, the conspirators heard that the letter had been shown to the King; and Thomas Winter made another appointment with Tresham to meet in Lincoln's Inn Walk on the same evening. Tresham appeared and was frantic. He said to his certain knowledge the whole plot had been discovered, that they were all lost, and that their only safety lay in instant flight. It was then agreed that Catesby and John Wright should leave London on the following afternoon;

that Percy and Thomas Winter should conceal themselves and be ready to start on a moment's notice. Fawkes calmly went back to his solitary station in the cellar.

Next afternoon, Monday, November 4, was the time of the visit of the Lord Chamberlain to the Whynneard house, and his inquiries of the man in charge, revealed as Fawkes by his later arrest and torture. After the Lord Chamberlain had left, Fawkes went out to inform Percy of this visit, then returned to his dangerous post. Shortly before midnight, Fawkes, on completing his work, was about to step from the house to go to his lodgings when he met Sir Thomas Knyvett and his party.

Immediately after Fawkes had told of the Lord Chamberlain's visit, Catesby and John Wright fled, riding hard for Ashby, according to their original plan. Thomas Percy and Christopher Wright waited until they learned of Fawkes's seizure, then they, too, joined in the flight for Ashby. Rookwood and Keyes, who were less well known in London, decided to remain until they had received conclusive proof that the plot had completely miscarried.

Going abroad on the morning of Tuesday, November 5, they found that the story of the plot and its discovery was already known throughout London, that guards had been placed at all the streets leading to the Parliament buildings and the royal palace, and that no one was allowed to pass. This situation determined their course. Keyes rode away from the City immediately.

Rookwood had placed relays of horses all the way from London to Dunchurch, and he waited as long as he felt he could, so that he might have the latest news to give his companions. At about eleven o'clock in the forenoon he began his ride for Ashby. Three miles out of the City gates he came up with Keyes, who rode with him for some distance, after which they separated. Rookwood overtook Catesby and John Wright and a little later Christopher Wright and Percy, and the five rode together to Ashby.

Their pace was astonishing. Rookwood had left London at eleven in the morning and reached Ashby with the others at six in the afternoon, a distance of nearly eighty miles in seven hours. He said he had ridden the first thirty miles on one horse

in two hours. Robert Winter was about to sit down to his supper in Ashby, when, covered with mud, the five horsemen arrived. After a short conference the entire party took all the arms and ammunition they could find and rode off for Dunchurch.

There they found assembled for the hunt a large party of guests, most of whom, on learning the true character of the meeting, rapidly disappeared. About a hundred, however, remained and joined the conspirators, who, concluding on further conference that the Welsh Catholics were most likely to give them help, proposed to go through Warwick, Worcester, and Stafford into Wales, and on their way endeavor to get their co-religionists in these counties to join them.

The band left Dunchurch at ten that night for the house of John Grant at Norbrook. When riding through Warwick, they broke into a stable and took nine or ten horses to replace their mounts. From Norbrook, Catesby sent his servant Bates to Coughton with a letter from Digby to Father Greenway, containing an account of their failure and informing him of their plans. After resting for an hour or two, they went on to the house of Robert Winter at Huddington, where they arrived at two o'clock on Wednesday afternoon, November 6. Here they were joined by Thomas Winter, who had left London the day before, and by Father Greenway, who had been with Father Garnet, at Coughton, when Bates delivered Digby's letter. At sunrise on Thursday morning, November 7, the whole company started for a house belonging to Stephen Littleton at Holbeach, seizing a store of arms and armor from Lord Windsor's house, Whewell Grange, on the way.

They arrived at Holbeach at about ten o'clock that night, having traveled some sixty miles from Ashby in two days, over bad roads in rainy weather. Their company was now reduced by desertions from the hundred who had joined them at Dunchurch to less than sixty. The Catholic people throughout the country they had traversed were cold to their project; and the conspirators knew that Sir Richard Walsh, the Sheriff of Worcestershire, was close behind them. They therefore determined to make a stand against their pursuers at Holbeach, and prepared for a fight. An occurrence then so demoralized them that their resistance to the Sheriff when he came up was ineffective.

In their wild journey from Ashby they had forded several streams, swollen by the heavy rains, and had wet their powder. Catesby, Rookwood, and John Grant endeavored to dry it by placing it on a platter near the fire. A coal fell into the drying powder, which blew up with a tremendous explosion that carried another large bag of powder through the roof, but without explosion. For a moment they thought Catesby had been killed; but, though scorched, he was more frightened than hurt.

The conspirators then felt for the first time that their plot had been a sin. The explosion seemed to them a judgment from Heaven to punish them by the very means they had intended using for the destruction of so many innocent persons. They all knelt before a picture of the Madonna, confessed that their contemplated act was evil and prayed for divine forgiveness. The assurance that they were martyrs in God's service left them completely. They saw themselves wretchedly miserable sinners, condemned of God, and hunted by their fellow men. There were more desertions. Thomas Bates and Robert Winter vanished. It was about the middle of the day after their arrival at Holbeach that Sir Thomas Walsh, the Sheriff, came, and the brief battle took place.

Tresham had not fled from London. He showed himself openly in the streets, and even went to the Privy Council to tender his services in apprehending the rebels. It is also of interest to note that the King's proclamation, issued November 7, did not name Tresham as one of the conspirators. So there seems to be some reason for the suspicion of his accomplices that he had played Judas.

Fawkes, in his confession made November 9, specifically mentioned Tresham as privy to the plot; but the authorities suffered him to remain at large until the 12th, when they arrested him and took him before the Council. In his first statement Tresham admitted that he had talked both to Catesby and Thomas Winter a few days before November 5, but he declined to state the subject of the conversation.

On the following day, however, he wrote to the Council that Catesby had informed him of the plot on October 15; that he had discouraged it in the strongest possible words, but finding that Catesby would not abandon it, he had urged that the

carrying out of the plans be postponed until the end of Parliament; that since Catesby would not consent to this, he had met him at Barnet again, and again urged postponement of the scheme; that he had met Thomas Winter at Lincoln's Inn Walk, and had given him 100*l.* to embark for foreign parts immediately, and thereafter he had heard nothing of the plot until news of its discovery went abroad Tuesday, November 5. He pleaded that he had taken no part in the conspiracy, and that his silence was justifiable because he was a friend of Catesby, and bound to protect him if he could. He further stated that Fathers Greenway and Garnet were both acquainted with the mission of Thomas Winter to the King of Spain in the latter years of Elizabeth's reign.

Tresham was committed to the Tower on November 15, but was not examined until the 29th. Soon after his imprisonment, he was attacked by a dangerous and painful disease which greatly weakened him. The Government allowed his wife and servant to attend him, but he died in the Tower on December 23. A few days before his death, he dictated a statement to Vavasour, his servant, retracting that part of his confession in which he had implicated Father Garnet in the mission of Thomas Winter to the King of Spain. Tresham signed this statement only a few hours before his last breath.

In searching Tresham's house, Coke came upon a manuscript entitled 'A Treatise on Equivocation,' which defended the giving of false evidence under certain circumstances. Tresham had shown to what extent he had mastered the art.

Coke, Bacon, Fleming, and the Lord Chief Justice, from the time of the capture of the conspirators at Holbeach, November 8, 1605, until their trial at the end of January, 1606, took some five hundred depositions. The principal object of the Government seems to have been to ascertain the extent to which the Catholic nobility and Jesuit priests were involved in the plot. Until January 13, the conspirators all denied that any priests were concerned in it; then Thomas Bates, Catesby's servant, confessed to carrying the letter to Father Garnet, the presence of Father Greenway with Garnet, and the reading of the letter by both. A royal proclamation for the arrest of Garnet and Greenway was immediately issued. Green-

way made his escape into Flanders. But Father Garnet and a Father Oldcorne were apprehended.

A request was made to the Archduke in Flanders to deliver up Hugh Owen, Sir William Stanley, and Fathers Greenway and Baldwin, who had all been implicated by the confessions of the prisoners. After much correspondence, and after the Archduke had referred the matter to the King of Spain, he refused to comply with the request.

XXIII

ROBERT WINTER, Thomas Winter, Guy Fawkes, John Grant, Ambrose Rookwood, Robert Keyes, and Thomas Bates were put on trial together at Westminster before a special commission on the charge of high treason January 27, 1606. It was generally said that the Queen and the two princes were in a secret place in the hall, and some said that even the King was present. The Commissioners were Charles, Earl of Nottingham, Lord High Admiral of England; Thomas, Earl of Suffolk, Steward of the Household; Edward, Earl of Worcester, Master of the Horse; Charles, Earl of Devonshire, Master of the Ordnance; Henry, Earl of Northampton, Warden of the Cinque Ports; Robert, Earl of Salisbury, Principal Secretary of State; the Lord Chief Justice of England, Sir John Popham; the Lord Chief Baron of the Exchequer, Sir Thomas Fleming; and Justices Thomas Walmsley and Peter Warburton of the Court of Common Pleas.

Coke, as Attorney-General, led the prosecution. The indictment was read, and the prisoners requested to plead to it. Their plea of not guilty caused a great deal of surprise in view of their own confessions. The Chief Justice asked Fawkes in particular how he could deny the charges of the indictment, since he had been actually arrested in the cellar where the powder was stored, and had never denied his connection with the plot. He answered that the indictment mentioned certain conferences of which he knew nothing. The following letter from Lord Salisbury apparently guided Coke in the conduct of the trial.

For these things I am commanded to renew unto your memory; First, that you be sure to make it appear to the world that there was an employment of some persons to Spain for a practice of

invasion as soon as the Queen's breath was out of her body. The reason is this for which the King doth urge it. He sayeth some men there are that will give it out that in all despair of the King's courses on the Catholics and his severity during all this they were moved to such works of discontentment; where by you it would appear that before His Majesty's face was ever seen or that he had done anything in government, the King of Spain was moved though he refused it, saying he rather expected to have peace. Next you in any case when you speak of the letter which was the first ground of discovery, absolutely disclaim that any of these wrote it, though you leave the further judgment indefinite who else it should be. Lastly, you must also deal in commendation of my Lord Mounteagle's words to show how sincerely he dealt, and how fortunately it proved that he was the instrument of so great a blessing as this was....

Coke, obedient to the instructions he had received, in his opening address traced all of the plots which had taken place in England since 1586, and pointed out how in each case the Jesuits and the Spanish King had inspired them or participated in them; and in extenuation of the Spanish King's act (for England was now at peace with Spain), he pointed out that there was at these various times hostility between the two countries. By his presentation he attempted to make it clearly appear that the cause of the rebellion was not James's attitude toward the Catholics, but the scheming of the Jesuits and the Spanish King, with the Pope always lurking in the background and prodding them on.

Then Coke launched into the detail of the plot, wherein he showed himself a prototype of the German Gelehrter. He divided his speech into three general parts, the first 'containing certain considerations concerning this treason,' with eight subdivisions, and the third 'a comparison of this treason of the Jesuits with that of the seminary priests and that of Raleigh and others,' with eight subdivisions. In the process of this long explanation a reader loses his own and is astonished at Coke's patience. Parts of depositions were then read showing the facts already set forth. The evidence was all submitted by six o'clock in the evening and the jury retired. Within a few minutes they returned with a verdict of guilty of treason.

Next followed the trial of Sir Everard Digby, before a Special Commission of Oyer and Terminer, held at Lambeth, Northamptonshire, on January, 1606. Coke was again the

prosecutor. The overt acts charged against Digby were that he had a conference with Catesby in Northamptonshire with respect to the powder plot, had assented to the design, and had taken the oath of secrecy. After the indictment was read to him, he was asked to plead. He confessed the treason, and made a speech in which he urged his reason for joining the conspiracy. He said his motive was not 'discontentment of his estate, nor malice to any in Parliament, but friendship and love for Catesby,' which prevailed to such an extent that he hazarded his life and estate. Secondly, he hoped to assist in the restoration of Catholicism to England; thirdly, he claimed that James's promises to the Catholics had been broken, and he feared harsher laws from Parliament against the Catholics. He pleaded with the Court that punishment for his offense be confined to himself, and not visited upon his wife and children, and therefore prayed that the Court intercede with the King not to have his lands forfeited.

Coke brushed aside his plea of motive in extenuation of his offense, as being mere folly and wickedness. As to his petition in behalf of his wife and children, he said:

Oh, how he doth now put on the bowels of nature and compassion in the peril of his private and domestical estate! But before, when the public state of his country, when the King and Queen and tender Princes, the Nobles, the whole Kingdom, were designed to perpetual destruction, where was then this piety, this religious affection, this care?... Then there was no conscience made to extirpate the whole Nation, and all for pretended zeal to the Catholic religion.... And for his wife and children, whereas he said that for the Catholic cause he was content to entangle the ruin of himself, his wife, his estate, and all, he should have his desire: as it is in the Psalm, 'Let his wife be a widow, and his children vagabonds; let his posterity be destroyed and in the next generation will his name be quite put out.'

So Coke savagely conducted his prosecutions. Since Digby had confessed, of course, there was nothing for the Lord Chief Justice to do but pronounce the judgment of the Court, which he did.

After conviction, the prisoners were returned to the Tower. On the 31st of January, 1606, Sir Everard Digby, Robert Winter, John Grant, and Thomas Bates were drawn from the Tower on sledges to the scaffold erected at the western end of

Saint Paul's churchyard, to be hanged, drawn, and quartered. Coke's explanation of this punishment gives a complete symbolism to the ceremony:

After a traitor hath had his just trial and is convicted and attainted, he shall have his judgment, to be drawn to the place of execution from his prison, as being not worthy any more to tread upon the face of the earth whereof he was made; also, for that he hath been retrograde of nature, therefore he is drawn backwards at a horse's tail. And whereas God hath made the head of man the highest and most supreme as being his chief and greatest ornament, he must be drawn with his head declining downward, and lying so near the ground as may be, being thought unfit to take benefit of the common air; for which cause also he shall be strangled, being hanged up by the neck between heaven and earth, as deemed unworthy of both or either; as likewise that the eyes of men may behold and their hearts condemn him. His bowels and inward part taken out and burned, who inwardly had conceived and harbored in his heart such horrible treason. After, to have his head cut off which had imagined the mischief, and lastly his body to be quartered, and the quarters set up in some high and eminent place to the view and detestation of men, and to become a prey for the fowls of the air. And this is a required due to traitors whose hearts be hardened; for that it is a physic of state and government to let our corrupted blood from the heart.

Digby, who was the first to ascend the scaffold, said his prayers, 'and with the help of the hangman, made an end of his wickedness in the world.' Robert Winter came next, made a few prayers, 'and stayed not long for his execution.' After him came Grant; 'he was as his fellows before him, led to the halter, and so after his crossing of himself, through the last part of his tragedy.' Then came Bates.

On the following day, the scene shifted to the Palace in Westminster, near the Parliament Houses. Here the unfortunate careers of Thomas Winter and Ambrose Rookwood, Robert Keyes and Guy Fawkes were ended.

One of the alleged plotters was still in custody and had not yet been tried, Father Garnet, Superior of the Jesuits in England. His trial did not take place until March 28, 1606. It was held at the Guildhall in London, by a special commission consisting of Sir Leonard Halliday, Lord Mayor of London; Charles Howard, Earl of Nottingham, Lord High Admiral; Thomas Howard, Earl of Suffolk, Steward of the Household;

Edward, Earl of Worcester, Master of the Horse; Henry Howard, Earl of Northampton, Warden of the Cinque Ports; Robert Cecil, Earl of Salisbury, Principal Secretary of State; Sir John Popham, Lord Chief Justice of England; Sir Thomas Fleming, Lord Chief Baron of the Exchequer; Sir Christopher Yelverton, one of the Justices of the Court of King's Bench, and several Aldermen of the City of London.

The King was said also to have been privately present. A vast assemblage of courtiers attended, several foreign ambassadors, and many ladies, including the Lady Arabella Stuart. The trial lasted from eight in the morning to seven in the evening. The indictment was read to the prisoner, charging him with knowledge of and participation in the Powder Plot. He pleaded not guilty, and put himself upon God and his country. A jury was called, and, before they were sworn, Garnet excepted to John Eldred. His exception was allowed and another juror substituted.

Coke conducted the prosecution, and first explained the delay in bringing the case to trial by saying that a large number of depositions had been taken. He pointed out how Garnet first came into England, twenty-eight years ago, in July, 1586; that the very act of his coming into the country was a treason under the statute which forbade all priests to come in; that before the issuance of the Bull of Excommunication by Pius V, in the eleventh year of Elizabeth's reign, all Englishmen, even though Catholics, came to church; but after the issuance of the Bull, the Catholics stayed away. Later, in his way of a schoolboy when he attempted wit, paying his compliments to the Pope, he said that not only could England subdue and overthrow all the Pope's letters and Bulls, but his calves as well.

In the twenty-eighth year of Elizabeth's reign, Coke continued, came Campion and other Jesuits, to make a party in England for the Jesuit cause: and in spite of these activities on the part of the Catholics, there was no law against the recusants until the twenty-third year of Elizabeth's reign, 'when a mild law was made that they should either come to Church, or pay 20*l.* for refusing to do so'; in the twenty-sixth year of Elizabeth's reign came Carry, with a resolution from Cardinal De Como and others that it was lawful to kill the Queen, because she was a heretic and excommunicated. Then

it was that Elizabeth had the law passed forbidding priests to come into the country. In the twenty-eighth year of Elizabeth came Garnet and other Jesuits, forerunners of the famous Armada, ready to raise sedition in the land and assist the attacking fleet.

After the attempted invasion of 1588 came Patrick Cullen, in 1592, in his attempt on the Queen's life; and in 1594, Williams and Yorke arrived in England for the same purpose, urged thereto by Holt and other Jesuits. In 1597, Squires came from Spain on a mission to poison the Queen, instigated by Walpole, a Jesuit, then living in Spain; and in 1601, was the Priests' Plot; and finally, the Powder Plot.

Coke had evidently taken well to heart Salisbury's admonition to show that the plot had not arisen out of the discontent fomented by the severe laws against the Catholics, but that it had been fanned by Spain and the Jesuits; had originated even before James's accession, and before the enactment of the recusancy laws.

Ever watchful for his own future, and probably knowing that the King was present, Coke added:

The Pope calls Elizabeth that miserable woman.... Was Queen Elizabeth miserable? Oh, was that great Queen of famous memory to be accounted miserable, whom almighty God so often and so miraculously protected, both from the arrow that flieth by day, their great Armada, and from the pestilence that walketh in darkness, their secret and treacherous conspirators?... Oh, blessed Queen, our late dear sovereign! And when it pleased God to take Her Majesty out of this transitory life, and that Morning Star in fullness of time lost her natural light, then the great and glorious Sun appeared on our horizon; and now, since the coming of our great King James....

Coke then pointed out that Garnet had been involved in or had knowledge of all these conspiracies; that in January of the first year of James's reign, Garnet had, with many others, obtained a general pardon of all treasons committed by him. He said of Garnet, 'he is by country an Englishman, by birth a gentleman, by education a scholar of Winchester, and then of Oxford, afterwards a corrector of the common law print with Mr. Tottell, the printer, and now is to be corrected by the law.... By profession, he is a Jesuit, and a Superior, as

indeed he is a superior to all his predecessors in devilish treason.'

Coke dwelt at considerable length upon the treatise on equivocation found in Tresham's chambers. He attacked Garnet's character on the ground of his relationship with a Mrs. Beaux; and, still with an eye to the future, he said of James's Queen, Anne of Denmark, 'great in birth, greater in marriage, but to all posterity, greatest in the blessed fruit of her womb as having brought forth the greatest princes that ever England had.'

After this lengthy opening speech, parts of depositions were read, showing the Popish plots from 1593 up to the Powder Plot. There was no direct evidence showing the participation of Garnet in any of them, and, furthermore, even if he had participated, he had obtained a general pardon; so that this entire testimony was entirely irrelevant and incompetent to establish Garnet's guilt on the charge which he then faced. Like many prosecutors before and since, Coke did not scruple to obtain a conviction by an appeal to the passion and prejudice of the jury.

The most telling evidence adduced against Garnet was the fact that Catesby had asked him whether it was lawful for a person in destroying his enemies, to kill some innocent people. Garnet was said to have replied that if one's enemies are in possession of a certain city, and the only way in which the city can be captured is incidentally to kill some innocent people, then it is lawful to kill the innocent, in order to accomplish the lawful object. It was said further that Father Greenway had then told Garnet of the Powder Plot in detail.

He claimed to have received this information under the seal of confession. Coke, however, urged that Greenway's confession was not a sacramental one, but told in an ordinary conversation. Moreover, the Earl of Salisbury asked Garnet whether a statement as to what some third person was about to do or had done was within the seal of the confessional, and Garnet admitted that he should have disclosed his knowledge to the Government.

Garnet's answer to the charge of treason was a justification of the use of equivocation, a justification of the Jesuits in general, and of himself in particular. The jury returned a verdict

of guilty in less than fifteen minutes, and the Lord Chief Justice pronounced judgment.

Several weeks passed after Garnet's conviction before his execution; and Coke used the intervening time in the examination of further witnesses. The warrant for the execution of Garnet was issued on the third of May; and on that day, he was hauled on a hurdle from the Tower to the scaffold in Saint Paul's churchyard, and there hanged, drawn, and quartered. By the King's mercy he was permitted to hang until quite dead.

The trial of Garnet was the last appearance of Coke in court as Attorney-General. He had then been actively engaged in ferreting the details of the Gunpowder Plot from the latter part of October, 1605, until May, 1606, during which time he had performed the leading part in the taking of some five hundred depositions, and had appeared as prosecuting attorney in three important trials.

XXIV

COKE had received no immediate reward for his conviction of Raleigh. Perhaps the swift popularity of the prisoner made inexpedient the conferring of public distinction on the Attorney-General who had so vituperatively prosecuted him. Opportunity to bestow reward came a year and a half later when in August, 1605, Sir Edmund Anderson, Chief Justice of the Common Pleas, died. Recognition of Coke, however, was deferred, and Sir Francis Gawdy, puisne judge of the King's Bench, was promoted to the vacancy.

There was, however, no doubt of the public satisfaction in the prosecution of the Gunpowder conspirators; and rumor went abroad before the trial of Garnet that Coke would have a barony and the Chief Justiceship of the Court of Common Pleas. Sir Henry Neville wrote to Winwood, March 11, 1606, saying: 'We are in some expectation of a creation of four barons: viz the Lord Chief Justice, [i.e., Popham], Mr. Attorney, who is designed Chief Justice in Gaudies room, Sir John Fortescue and Sir Thomas Knevet.''

'Gaudies room' probably anticipated the resignation of Sir Francis, then a man in the middle seventies. Only a few months later, however, in Serjeants' Inn, a stroke of apoplexy

carried the elderly justice to his final retirement. Though the barony Neville thought Coke would get was not bestowed, the other expectation came to pass. The King made Coke Chief Justice of the Court of Common Pleas.

XXV

WHAT of Bacon since he had met the new sovereign coming into his green pastures, and had eyed the King's demeanor towards Coke? Whenever the lawyer-philosopher had the opportunity then, and all through his life, he pondered on the questions of science, and scribbled and scribbled away at those writings of his which were to do so much in directing the mind of man to the problems of his physical environment; scribbled and scribbled, and had the scribbling turned into Latin for the benefit of the scholars of the world.

He always appeared to advantage in the Commons, and as a member of the first Parliament of the new reign he ably entered into a proposal he thoroughly believed in, a proposal that was close to the King's heart, and the members voted his name first among those they appointed commissioners for the Union with Scotland. He began taking his part in the debates on a commutation of feudal duties which occupied much of the time of Parliament for several sessions; wardships, marriage, premier seizin, relief, respect of homage, of purveyance and the like: vestigia of an age that had passed, which, however, were not cut out of the social system till years later.

The joyous James created knights by the score, and Mr. Bacon, chagrined to find three new ones in his mess at Gray's Inn Commons, wanted, at the age of forty-three, a spur on his heel to cut a figure before 'an Alderman's daughter, an handsome maiden, to my liking.' Through Cousin Salisbury he besought the favor, and that he might not 'be merely gregarious in a troop'; he got the honor, not with a troop, but with a squadron of three hundred, whom a burst of royal exuberance made knights two days before the coronation July 25, 1604.

It was a month later when the King conferred on him by patent the office of Counsel Learned, and bestowed a welcome pension of sixty pounds a year for life — a small and hard-won reward for the man who for more than seven years had hoped to be Attorney-General.

He determined to clear up any ill report that might stand in the way of advancement, and published 'Sir Francis Bacon, his apologie in certain Imputations concerning the late Earle of Essex.'

Little as his recognition was, it had to serve for the time. When, October 27, 1604, the King appointed Sir Thomas Fleming, till then the only Solicitor-General who had served under Coke, to the office of Chief Baron of the Exchequer on the death of Sir William Peryam, Sir John Doderidge came into the vacant Solicitorship. But Coke was then Attorney-General, and the office of Solicitor was still no place for Bacon. His good friend Ellesmere suggested that when the time came for Coke to go on the bench, the new Solicitor, Doderidge, should rise a half step and be appointed King's Serjeant; and that Bacon, whose expectations years of waiting had moderated, should become, not Attorney-General, but Solicitor at last; and the Government should have the Attorneyship for some one else.

As the time for rewarding Coke approached, Bacon, apparently about the day before the Garnet trial, wrote Salisbury:

It is thought Mr. Attorney shall be Chief Justice of the Common Pleas. In case Mr. Solicitor rise, I would be glad now at last to be Solicitor, chiefly because I think it will increase my practice, wherein God blessing me a few years I may amend my state, and so after fall to my studies and ease, whereof one is requisite for my body and the other suiteth my mind.

Dreams of studious retirement which had no reality in will — though the mind of Bacon was more complex than that of Coke, the philosopher, like his rival, could not live without prominence.

Bacon suffered one more disappointment. The Government appointed Henry Hobart Attorney-General, but left Doderidge in the Solicitorship.

Discovery of the Gunpowder Plot had not deferred the reassembling of Parliament. Then the further work of Bacon on behalf of the Union of England and Scotland, on which he had in the meantime labored as a commissioner, became so conspicuously able that James finally did appoint Doderidge King's Serjeant, and July 25, 1607, a year and five days after Coke became judge, Bacon at last became Solicitor-General.

A little more than a month before Coke became a judge, Bacon had married his Alderman's daughter, Alice Barnham. As Carleton reported the event, 'Sir Francis Bacon was married yesterday to his young wench in Maribone Chapel. He was clad from top to toe in purple, and hath made himself and his wife such store of fine raiments of cloth and of silver and gold that it draws deep into her portion.'

Then, event for which he had waited, William Mylee, Clerk of Star Chamber, died July 16, 1608, and Bacon came into the reversion which Uncle Burghley had procured for him nineteen years before. Its worth was 1600*l.* a year. The Solicitorship was worth 1000*l.* a year; and Alice Barnham had brought a dowry. With the brilliant service he had done in Parliament winning royal favor, Bacon had his foot on the ladder and was on his way up.

BOOK III

THE JUDGE

And you, Honorable and Reverend Judges and Justices, that do or shall sit in the High Tribunals and Courts or seats of Justice, as aforesaid, fear not to do right to all, and to deliver your opinions justly according to the laws: for fear is nothing but a betraying of the succours that reason should afford. And if you shall sincerely execute justice, be assured of three things: First, though some may maligne you, yet God will give you his blessing. Secondly, that though thereby you may offend great men and Favourites, yet you shall have the favourable kindnesse of the Almighty, and be his Favourites. And lastly, that in so doing against all scandalous complaints and pragmatial devices against you, God will defend you with a shield:

For thou Lord wilt give a blessing unto the righteous, and with thy favourable kindnesse wilt thou defend him as with a shield.

EDWARD COKE

BOOK III

THE JUDGE

I

WITH the delight of Elizabethans in the splendor of pageantry, they did not fail to make use of the opportunity for its display which an induction into high judicial office afforded. A common-law judge could be appointed only from the ranks of serjeants of the law; and serjeants obtained their degree by special call of the King, who issued his private writ to them. On the day set for the investiture, the serjeant-elect, accompanied by the Benchers, Readers, and others of Inn, appeared at Serjeants' Inn, before the two Chief Justices, and all the other justices of the Courts of King's Bench and Common Pleas who chose to attend.

The Chief Justice of the Court of King's Bench addressed the serjeant-elect, probably reviewing his legal career and attainments, and felicitating him upon the high office to which he was about to be called; and at the close of the address, the serjeant-elect began the presentation of a fictitious case at law, to which an ancient serjeant answered. Satisfied by the conduct of the case that the serjeant-elect was fit and qualified for this degree, the Chief Justice and judges had the writ of appointment read and delivered to him; his coif of white silk and his scarlet hood were put upon him, and he was arrayed in his gown of blue and brown.

Thus adequately clothed for his appearance among the serjeants in the two principal common-law courts, on the following day, again attended by the Benchers, Readers, and others of Inn, a gathering frequently augmented by other friends, he proceeded to the Court of Common Pleas at Westminster Hall, where his plea in the fictitious case made at Serjeants' Inn, the defense to it, and his writ of appointment were all read. At the close of the reading, he presented to each of the judges a gold ring of a required weight and quality, inscribed with a suitable motto of his own choosing, and took his seat among the serjeants.

The judges did not scruple to examine their gift closely, and

to weigh it carefully, to see that it complied in all respects with the ancient customs. On one occasion when the rings fell short by two-shillings' worth of the prescribed amount of gold, the judges called the attention of the serjeant to the fact on his next appearance, not, as they said, that any additional gift should be made to them in order to compensate them for the lack in the original gift, but merely that the gentlemen who still hoped to attain the honorable degree might not be misled into like error.

When the ceremonies at the Court of Common Pleas were ended, the new serjeant entertained the judges. The feasting and rejoicing might last as long as seven days.

Coke was made a serjeant at law on the 20th of June, 1606; and instead of following the usual course of appearing before the judges at Serjeants' Inn on one day, and before the Court of Common Pleas on the next, he went through all the ceremonies in a single day. The rings which he presented to the judges he had inscribed with the motto, '*Lex est tutissima cassis*' — The Law is the safest shield.

Since Coke had not earlier been created serjeant, this ceremony was a necessary preliminary to his induction into the judgeship. Immediately after the writ calling him to the serjeantcy had been read in the Common Pleas, he was inducted Chief Justice of the Court, and sat as such.

II

THE ceremonies of the installation of Coke were hardly over before he found himself confronting a problem which had disturbed the peaceful administration of justice for several centuries, and then pressed for solution — the conflict between the courts of common law and the ecclesiastical courts over their several jurisdictions. The common-law courts for many years had been issuing writs to the ecclesiastical courts prohibiting them from proceeding with cases pending in their courts, upon the ground that the matter in issue was one properly triable by the common-law courts, and not by the ecclesiastical courts. The great majority of the cases in which the writ of prohibition issued, were those involving payment of tithes, although it was by no means limited to this class of litigation, nor even to the ecclesiastical courts.

In order to have a clear understanding of the problem confronting Coke, it is necessary to review briefly its history and its status at the time he became Chief Justice of the Court of Common Pleas.

In the Middle Ages, the vicar of a parish received his income partly from his own work upon the land annexed to the vicarage, but principally from the tithes or tenths of all the produce of the land, the flocks, and the annual harvest generally, of those to whom he ministered. In addition, he received certain fees for marriages, christenings, and burials, and presents given him at Christmas and Easter. His chief income, however, was from the tithes; and everything was tithable, from the grain in the fields to the newborn lambs and calves, the wool sheared from the sheep, the honey and fruit gathered, and the wood cut for the winter's fire. In a purely agricultural age, when money was hardly in common use, but practically everything was paid in kind, this system seemed fair, and worked reasonably well.

With the growth of commerce and industry, however, money became usual in trading; and as every one else began to be paid in money, both vicar and parishioners alike began to prefer the payment of tithes in money. There were some difficulties in arriving at a money value for the tithes, because the acreage which was sown was not always the same, and the increase of flocks varied considerably.

So neither party was willing to stipulate for a fixed sum which should discharge all annual obligations, but agreements were frequently made whereby a certain price was set upon each acre of barley, wheat, or other grain, and a price for each lamb, each calf, for honey, wood, wool, and so on. To this scale of prices, of course, the entire village had to agree; for no parishioner would pay more than his fellows.

When the consent of the village and that of the vicar was obtained to such an arrangement, it was called, in legal parlance, a *modus decimandi*. By 1530, such agreements had been made in many of the villages of England. Tithes, in a legal sense, were divided into great or predial tithes, and small or personal tithes. The great tithes related to grain, which formed the staple agricultural product; the small tithes related to increase in flocks, fruit, and garden produce, and so on.

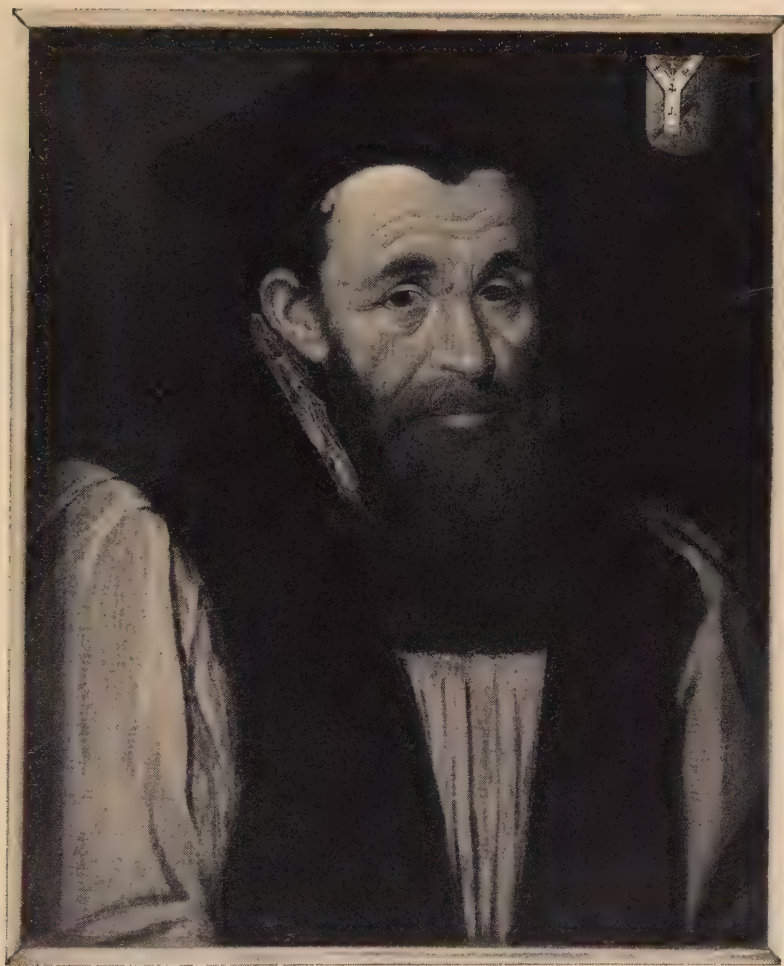
However, from about 1450, great changes came about in the agricultural methods of England. With the turning of the arable land into pasture for sheep, the grain crop was decreased; the greater tithes became less and less; and the small tithes, which before had been considered of little value, and had been commuted for a nominal sum in the *modus decimandi*, became of great value, especially the tithes in wool.

Then, too, there was a psychological change, more subtle than that of agricultural methods, but even more far-reaching in its effects. The Reformation had taught that man could acquire salvation only by inward grace and repentance — means not aided in the least by payments to the clergy; and the English farmer asked himself why he should turn over one tenth of what he had produced by the sweat of his brow for the maintenance of the clergyman who could not give him a proper *quid pro quo*. So the farmers began to look for ways and means whereby they could escape payment of the tithes. Furthermore, the Catholics and Puritans saw no particular reason why they should support the parson of the Established Church, when the very doctrines it was teaching were repugnant to them.

The entire situation was further complicated by the fall in the value of money, with the equivalent rise in prices. It was therefore to the interest of the farmer to prove, if he could, a *modus decimandi*, whereby payment of tithes had been commuted upon the basis of certain specified money payments, which in all cases were very small compared with the prices obtaining at the beginning of the sixteenth century, with the consequence that his so-called tithe was in reality much less than one tenth of the value of his produce.

All of these factors had a direct effect upon the Church. The incomes of the parsons became totally inadequate, with the result that clergymen were often ignorant and incompetent, and the Establishment generally in an unsatisfactory condition. One way in which the income of the clergy might be increased, and the Church reestablished upon a sound basis, was to obtain the full value of the tithes, either by a return to the first method of payment in kind, or by means of a new commutation at the existing price-level.

With the second end in view, the clergy from time to time



RICHARD BANCROFT
Archbishop of Canterbury
National Portrait Gallery, London

procured the introduction of various bills, which, however, Parliament refused to pass. Its refusal left the Church with no hope of ameliorating its condition except by reinstating tithing in kind. So long as tithes were paid in kind, there was no doubt but that the ecclesiastical courts properly had sole jurisdiction over all disputes concerning them. However, after a commutation from payment in kind to money payment, the *modus decimandi* was no longer within the ecclesiastical jurisdiction, but, as a contract, a temporal matter, came solely within the jurisdiction of the courts of common law.

When, on the death of Whitgift in 1604, Bancroft became Archbishop of Canterbury, he made vigorous attempts to increase the incomes of the clergy. Apparently, the Primate did not issue any general orders or directions to the clergy; but the Archbishop and bishops on their visitations discussed the situation, so that the ecclesiastical judges seem to have arrived at a tacit understanding that in any question of tithes only the most unimpeachable evidence of the existence of a *modus decimandi* should be recognized; and if this were not shown, tithing in kind should be resumed. Resulting from this attitude, many suits involving payment of tithes arose. The vicar would bring his parishioner into the ecclesiastical courts and demand payment in kind; and as a defense, the parishioner would set up a *modus decimandi*, which, however, under the strict rules of the ecclesiastical judges, he would frequently have difficulty in proving, for such agreements were almost always made orally.

Consequently, he would apply to the courts of common law, sometimes before judgment in the ecclesiastical court, and sometimes not until after such judgment, for a writ to prohibit the ecclesiastical court from proceeding with the hearing and determination of the case, or from taking further proceedings if it had already been determined. Then, if the Church brought suit in the common-law court, the defendant would be entitled to trial by jury. Since the jury would ordinarily consist of fellow farmers who might soon find themselves in the same position as the defendant, there was little doubt as to the verdict.

During the period from 1590 to 1604, the question of the jurisdiction of the ecclesiastical courts in the matter of tithes

and the right of the courts of common law to issue prohibitions, grew insistent. In the year 1600, the Bishops of England addressed a petition to Queen Elizabeth entitled 'Certain Points which the Reverend Fathers, the Bishops, executing ecclesiastical jurisdiction, partly by Her Majesty's immediate commission under the Great Seal of England, and partly by their own ordinary authority derived from the Crown, do desire the Lords and others, the Reverend Judges of the Realm, to consider of, touching the granting of Prohibitions.' Nothing came of this petition.

Bancroft, the new Archbishop of Canterbury, in 1605, in the name of the clergy of the realm, submitted to the Privy Council a long complaint comprising some twenty-five separate articles or charges, which Coke later dubbed the *Articuli Cleri*. Substantially they set forth that since the King was the common source of jurisdiction of all courts, ecclesiastical as well as common-law, he had power to correct any abuses which might be called to his attention in either of these courts; that the number of prohibitions issued had enormously increased in the past few years; that the judges no longer stated in their writs of prohibition the grounds upon which they were issued, but left the ecclesiastical courts in the dark as to the matters upon which they had jurisdiction — a most unfortunate statement, for the judges in their answer said very coldly, 'it is their ignorance in the Arches [the ecclesiastical court], that will not understand this, and we may not supply their defects without changing our forms of proceedings, wherein, if they would take the advice of any learned in the law, they might soon receive satisfaction.'

The prelates complained that the common-law courts had no right to issue the writ of prohibition at all; and said that, since it was an original writ, it should be issued only out of the Court of Chancery. The common-law judges replied that it was 'a strange presumption in the ecclesiastical judges to require that the King's courts should not do that which by law they ought to do and always have done, and which by oath they are bound to do. And if this shall be holden inconvenient, and they can in discharge of us obtain some act of Parliament to take it from all other courts than the Chancery, they shall do unto us a great ease, but the law of the realm cannot be changed but by Parliament.'

In answer, the clergy said that the prohibitions, taking the trials concerning their rights to tithes from the ecclesiastical courts to the common-law courts and juries, were improper; and that the judges well knew that, where a custom concerning tithes was in question, the jury would not be likely to decide in favor of the clergy. The answer of the judges was brief, but much to the point. They said that the clergy had grown 'so troublesome to their neighbors as, were it not for the prohibition, they would soon overthrow all prescriptions and compositions that are for tithes.'

The answers on behalf of the jurisdiction of the common-law courts were delivered to the Privy Council in the spring of 1606, and were subscribed by all the judges of England, and by the Barons of the Exchequer.

So, at this point in the dispute, in June, 1606, Coke, promoted from Attorney-General to the Chief Justiceship of the Court of Common Pleas, inherited a problem that for fifteen years had been plaguing the Chief Justices of the Courts of King's Bench and Common Pleas. While he was Attorney-General, he seems to have attempted to act as mediator between the common-law courts and the Archbishop, with whom he was very friendly; and apparently, even after his appointment as Chief Justice of the Court of Common Pleas, he continued his efforts to arrive at a *modus vivendi* with the ecclesiastical courts. Whatever prospects Coke may have had of bringing about an amicable settlement received a severe setback early in the year 1607.

Thomas Ladd, a merchant of Yarmouth, had been tried in the ecclesiastical court at Norwich for attending an unlicensed religious ceremony, had been duly sworn, and his testimony developing a very considerable discrepancy, he was charged with perjury and ordered to appear before the High Commission in London. There he declined to take the oath unless he might first see the answers he had previously given. This request was refused, and on March 29, 1607, he was committed to prison for refusal to take the oath and testify.

Mansel was a nonconformist minister, who had been arrested as one of the movers of a petition to the House of Commons which the Government considered offensive. When requested to take the oath and testify, he also had refused to do

so unless he were allowed to see the charge against him. Since this was denied, and he still refused to testify on oath, he, too, was imprisoned.

Thereupon Nicholas Fuller, Esq., a barrister of Gray's Inn, was engaged as counsel for the imprisoned men. He applied to the Court of King's Bench in April, 1607, for writs of habeas corpus. They were granted on April 30, 1607, returnable on May 6. Upon the return day, Fuller argued that his clients must be released, because the Court of High Commission, an ecclesiastical court, had no legal authority to imprison them. That court, he said, was statutory, deriving its authority from the statute 1 Eliz., c. 1, sec. 7, which granted to the Commissioners only such powers as the bishops had possessed prior to the passage of the act; and Fuller claimed that prior to the passage of this statute, bishops had possessed no authority to fine and imprison.

In the course of his argument, Fuller made a comparison between the powers which the High Commission was actually exercising to the knowledge of every one, and those which it was authorized to exercise under the statute; and the comparison was not favorable to that court. He brushed aside the royal letters patent in which the members of the Commission were appointed and their powers set forth, on the ground that the letters patent could grant no broader powers than those specified in the statute. He declared the procedure of the Commission to be Popish, not of Christ, but of anti-Christ, and that the power of the Commission was being used to suppress the sacrament and true religion.

The matter was adjourned for a second hearing on June 13, 1607. At this hearing, Fuller amplified his previous charges, and even hinted that the Commissioners embezzled the fines which they collected. Again the judges of the Court of King's Bench could come to no decision, and adjourned the proceeding for a hearing before all of the judges of England after the summer vacations.

However, early in July, 1607, Fuller found himself occupying the position of defendant in person, instead of being merely counsel for the defendants: the High Commission had caused his arrest on a long list of 'scandalous' things which he had falsely affirmed 'to the slander of the Church, to the

hardening of the Papists... and to the malicious impeachment of His Majesty's authority in causes ecclesiastical.' Fuller immediately applied to the Court of King's Bench for a writ of prohibition, which was granted, returnable after the summer vacation.

Unfortunately for Fuller, he had to spend the entire summer in jail; but, upon the return of the judges towards the end of September, the matter was set down for hearing before all of the judges of England. Fuller argued that, since the matter complained of had been spoken in the common-law court, if there were a contempt, it was one punishable by the common-law courts, and not by the ecclesiastical courts, and that the action of the Court of High Commission should be prohibited. The judges, however, after much deliberation, issued a writ of consultation in October, 1607, authorizing the High Commission to proceed 'with all due and proper speed according to your ecclesiastical authority, against the schism and heresy, impious errors or pernicious opinions of the aforesaid Nicholas Fuller'; thus evading the issue raised by Fuller, and permitting the High Commission to proceed with the hearing of the charge of schism and heresy, which obviously was permissible under the statute 1 Eliz., c. 1.

The ecclesiastical court followed the suggestion of the common-law court, and found Fuller guilty of schism and heresy, fined him two hundred pounds, and sentenced him to prison during pleasure. Fuller again applied to the Court of King's Bench, this time for a writ of habeas corpus on his own behalf. The writ was issued, returnable during the first week of November, 1607.

James, by this time, was thoroughly aroused and angry. He felt his prerogative was threatened, since the High Commission was exercising powers which his letters patent expressly granted; and he directed Robert Cecil, Lord Salisbury, the Lord Treasurer, to take charge of the defense of his honor, and to see that no argument took place over his prerogative. Hobart, who had been made Attorney-General on Coke's promotion to the Chief Justiceship, was ordered to argue the habeas corpus against Fuller. In due time, Fuller was produced at the bar of the Court of King's Bench, the warrant for his arrest was read, and he duly excepted to it 'both in

matter of form and substance.' The judges found that the warrant did not show on its face that the High Commission had proceeded against him in a manner forbidden by the writ of consultation, which it had previously issued, declared the warrant valid, and remanded Fuller to prison. This decision closed the matter, excepting for the payment of the fine, which Fuller made in due course.

James was grateful to the judges who had upheld his authority, and on November 30, 1607, he wrote Coke thanking him profusely, and begging him to 'continew his advices and conferences with my Lo: of Canterbury, for the settling of those differences between the King's Bench and the High Commission.'

But Coke, in spite of his friendliness with Bancroft, who had been at Trinity with him, continued to issue prohibitions against the ecclesiastical courts. Bancroft again appealed to the King, and James ordered the judges to appear before the Privy Council to answer for their obstructive tactics. They appeared in February, 1608, and again in June of that year; but the debates as to the respective jurisdictions did not begin until November. The opening session had been set for November 6, 1608, and though both the judges and the prelates then met in the Council Chamber, neither side was ready to proceed, and James ordered an adjournment of one week during which each side was to serve its briefs upon the other, so that they would both be ready to rebut each other's arguments. On Sunday, November 13, 1608, with King James acting as chairman, the debates began.

Coke was spokesman for the judges; Bancroft, the Archbishop of Canterbury, the principal advocate for the clergy. The discussion was based largely on various phases of tithing. Coke started with an exposition of the statutes relating to tithes, and showed that, so long as no temporal question was involved, the ecclesiastical courts had undoubtedly exclusive authority, but the moment the tithe was commuted in any way, it was no longer within the ecclesiastical jurisdiction, but a contract solely within that of the common law, and, therefore, whenever the parishioner set up a *modus decimandi*, that question was to be tried not in the ecclesiastical courts, but in the common-law courts by jury; that the question whether the

commutation of tithes was fair and equitable was not at all in issue; if it were shown that the commutation had been made, even though the Church was now the loser, it must be held to its bargain. He argued, further, that he knew full well that the civilians would interpret the law differently, but that it was the duty of the judges to expound the common law, and their interpretation must be received in preference to that of any one else, however learned he might be in other subjects.

James here interposed on behalf of the clergy, and said to Coke that the judges were like the Papists, who quoted Scripture and then wished their own interpretation to be accepted without question; so, the judges cite statutes in support of their own views, and then insist that only their interpretation is correct. James went on to say that he was the supreme judge, and under him were all the courts; that there was nothing to prevent his sitting on the bench and deciding cases himself if he chose, but, nevertheless, he would protect the common law.

'The common law protecteth the King,' said Coke. 'That is a traitorous speech,' shouted James in great anger; 'the King protecteth the law, and not the law the King. The King maketh judges and bishops'; and he denounced Coke so fiercely and excitedly, rising in his chair and shaking his fists in Coke's face, that the Lord Chief Justice of the Court of Common Pleas, 'fell flat on all fower' before the King, and humbly begged his pardon; but it was not until Salisbury interposed on Coke's behalf that the King was somewhat mollified.

James realized that for the time being, at least, nothing further could be accomplished, and adjourned the discussion until the Christmas holidays. Apparently, the debates were not resumed on the adjourned date, for in December, 1608, the Archbishop of Canterbury presented another petition to the King, and on January 22, 1609, the judges and Doctors of the Civil Law complained to the Archbishop of a 'newe kinde of prohibition,' which forbade the judges of the ecclesiastical court in London from calling before them any man resident in any other diocese, on the ground that it was forbidden by the statute 23 Hen. VIII, c. 9.

Bancroft then proceeded to emulate Coke. He began a

search of all the old books and records for every scrap of evidence bearing on the conflict between the two jurisdictions. Bacon and Salisbury, under instructions from the King, were also digging away at the old parchments, and Coke was not idle.

Lord Chancellor Ellesmere, in May, 1609, attempted to compromise the differences between the two jurisdictions, and held a conference with Fleming, become Chief Justice of the Court of King's Bench, who was attended by one of his colleagues, and Coke, who was attended by one of his associates. The group met at York House, the Chancellor's official residence, May 13, 1609. The Chancellor handed each a list of the matters in controversy, and asked them to meet him again the following week with their replies and suggestions.

When they reassembled, Coke replied on behalf of the judges; but the conference bore little fruit. The whole matter, therefore, again fell back to the King, who ordered the judges and prelates to attend before him on May 24, 1609. James again presided, with the Privy Council on one side, and the bishops on the other; in front of him the two Chief Justices with their associates, and somewhat aside, the ecclesiastical judges and the civilians of the ecclesiastical court.

James first declared his determination to allow no innovation in the law of the realm; he expressed his desire to be impartial, and to give each court the exact jurisdiction to which custom and law entitled it. He then commanded the judges to justify their position, but Bancroft asked leave to speak first on behalf of the Church. Bancroft argued that a jury trial was not the proper method of deciding tithe cases, because no twelve men could be found in any parish who were really impartial, indeed, who were not as vitally affected as the defendant himself. Hence, he said, the delivery of such a question to the jury was nothing less than allowing them to decide their own causes.

Dr. Bennet, a judge of the Prerogative Court, followed Bancroft, and argued against the granting of any writs of prohibition at all, saying that if the judges had any grievances, they should take their complaints to the King as the fountain head of justice, and he would restore to them their rights.

Solicitor-General Francis Bacon followed Bennet, 'and,' says Coke, 'in effect said less than Dr. Bennet said before.'

Coke then rose to reply. He showed by many citations that trial of a *modus decimandi* had always been by a jury of twelve; that such a trial was the law of the realm, which neither the King nor the parties before him, but only Parliament, had any right to change. He continued:

Your Majesty, for the great zeal which you have to justice and for the due administration thereof, hath constituted and made fourteen judges, to whom you have committed not only the administration of ordinary justice of the realm, but criminal *laesas majestates*, touching your royal person for the legal proceeding; also in Parliament, we are called by writ, to give to Your Majesty and to the Lords of the Parliament our advice and counsel, when we are required; we two Chief Justices sit in the Star Chamber, and are oftentimes called into Chancery, Court of Wards, and other high courts of justice; we in our circuit, do visit twice a year your realm, and execute justice according to your laws, and if we, who are your public justices, receive any diminution of such reverence and respect in our places which our predecessors had, we shall not be able to do you such acceptable service as they did, without having such reverence and respect as judges ought to have. The state of this question is not in *statu deliberativo*, but in *statu judiciale*... and therefore it was never seen before that when the question is of the law, that your judges of the law have been made disputants with him who is inferior to them, who day by day pleads before them at their several courts at Westminster, and although we are not afraid to dispute with Mr. Bennet and Mr. Bacon, yet, this example being *primae impressionis*, and yet Your Majesty detesting novelties and innovations, we leave it to Your Grace and princely consideration whether Your Majesty will permit our answering in *hoc statu judiciale* to this charge upon your public judges of the realm.

James finally said that he would maintain the common law, and would give its judges as much respect and honor as any of their predecessors had enjoyed; but he wished them to confer again with each other, and to keep within their own limits without vexation and humiliation done to his subjects, and without the delay or hindering of justice. He concluded that 'he saw much endeavor to draw water to their several mills, and therefore advised them to think among themselves of some moderate course wherein the good of the subjects might be more respected than their particular jurisdiction.' He then

ordered the debates adjourned until after the Trinity Term, and required Hobart, the Attorney-General, and Bacon, the Solicitor-General, to prepare briefs.

A little over a month later, on July 6, 1609, the contestants once more assembled at Whitehall before James. Coke spoke first, and said that the common-law courts had agreed to issue no prohibitions except in open court; that they would insist upon an examination of the truth of the suggestion that the common-law jurisdiction was being encroached upon, and would require proof of the fact by two witnesses; that they would hear the arguments of the party whose suit was to be prohibited, and would require the party seeking the prohibition to give bond for the charges which his opponent might incur in procuring the vacation of the writ of prohibition. Coke again argued that the right to determine all questions of *modus decimandi* belonged to the common-law court.

On the next day, Bacon argued at great length that the Court of Common Pleas could not issue original writs, and hence could not grant a prohibition to the ecclesiastical court, unless the suit were also pending in its own court. Coke denied that this was the law, and quoted many authorities against Bacon.

The day following, another phase of the tithes question was discussed. Under the statute 2 and 3 Edw. VI, a penalty of double the value of the tithes was imposed for failure to separate them, such penalty to be paid to the person to whom the tithes were due, who might bring his suit therefor in the ecclesiastical court. In the same statute, it was provided that for the offense of carrying away tithes which had already been separated, a penalty of treble the value of the tithes should be imposed, but the act did not provide where the suit was to be brought, nor who was to receive the penalty. Coke argued that wherever no mention was made in a statute as to the court in which the suit was to be brought, the action must be in the courts of common law.

Bacon, in opposing Coke, urged that, though it was true that if a statute made an act an offense which theretofore had not been one, and failed to provide for trial in a particular court, then undoubtedly the statute must be interpreted as meaning that the trial should be at common law; but if, as

here, the offense in question was old, and had been of ecclesiastical cognizance for centuries, then it must be tried in the ecclesiastical courts, where such offenses had always been tried. The King seemed to think that Bacon had utterly routed Coke, and required Coke to reply; but Coke simply repeated that, if the vicar sought to recover double the value of the tithes, he might sue in the ecclesiastical court, but if he sought treble value, he must proceed at common law.

Next Hobart, the Attorney-General, discussed the provisions of the statute 23 Hen. VIII, c. 9, which it was alleged the High Commission had violated by summoning subjects before it from all parts of England. If the High Commission had no authority except that which was contained in 1 Eliz., c. 1, then all the letters patent constituting it, issued for sixty years, three of which Coke had himself drawn while Attorney-General, were illegal.

Finally the King rose and said that he would not decide the matter immediately, and for the time being commanded the judges to adopt Coke's suggestions with respect to the issuance of prohibitions. He ordered the Lord Chancellor to look into the various questions raised, and the authorities cited both by Coke and Bacon, and to report to him before the Michaelmas Term. As to the High Commission, James ordered Coke to explain to it the various prohibitions which had been issued, and, pending final determination of the matter, to refrain from issuing further prohibitions to that court, if necessary complaining to him whenever the Chief Justice felt that the jurisdiction of the Court of Common Pleas was being infringed.

In the fall of 1609, or the spring of 1610, Coke presented to the King his reply to the charges against him and his brethren of the Bench. 'Acts of Parliament made by the Kings, the Lords and Commons, are part of the laws of England, to be interpreted by the judges of those laws, and not by any canonist or ecclesiastical judge.' As to the High Commission, it had jurisdiction only in case of 'enormous' crimes, and the act did not mean to establish a court which should supplant the ordinary ecclesiastical authority. Hence the Commission might fine and imprison only in serious criminal cases. As to the statute of Edw. VI, relating to tithes, Coke reaffirmed his

opinion that the party aggrieved must sue at common law if he desired to recover treble value of the tithes, or he might sue in the ecclesiastical court if he was content to recover only double value. Prohibitions, Coke showed, had always been issued by the common-law courts, whenever any other court exceeded its jurisdiction. As to suits *de modo decimandi*, this was a temporal matter, triable solely at common law. And James finally accepted Coke's views.

The particular importance of this struggle lay in the insistence of Coke upon the exclusive right of Parliament to change the laws of England, his vigorous opposition to the claim of any right, even by the King himself, to change the law of the land. Coke established a constitutional landmark, the full effect and importance of which the contending parties themselves did not realize. It was not until fifty years later that men fully understood and appreciated the wisdom of Coke's opinion.

III

ALMOST from the time that James left Scotland to assume the crown of England, his heart was set upon uniting the two countries, and in 1604, an act of Parliament appointed certain commissioners to draft an act of union. Bacon, as already stated, was one of the commissioners, and the moving spirit for the Government in the whole proceeding. It had been contemplated that along with an act of union, Parliament would enact supplemental naturalization laws, to cover both the rights of Englishmen in Scotland, and those of Scotchmen in England. Before passing any of these acts, however, Parliament demanded that certain grievances be remedied, and on James's refusal, Parliament refused to pass the Naturalization Act.

It was believed that James wanted to place his Scotch favorites in offices of power and profit; and it was said of them that they were like lean kine looking wishfully and enviously upon the rich pastures of England. If the Scotch were aliens, the law forbade their holding certain offices, which they might hold if they were naturalized subjects of the British King.

Though it was acknowledged that Scotchmen born before the union of the crowns did not become also Englishmen by

the fact that the Scotch King had become the King of England, it was debatable whether or not those born after that event — the Post Nati — automatically became Englishmen in addition to being Scotch.

As a test case, to determine the rights under the existing law, it was arranged that certain lands be purchased in the name of an infant born in Scotland after the accession of James to the English throne. It was further arranged that the infant should be dispossessed of his lands, and should sue his dispossessors, who, in turn, would set up as a defense the fact that the infant was an alien, and, as such, was not entitled by the law of England to hold real property. This brought the question squarely to issue. The case was argued before the Lord Chancellor and all the judges of England, assembled in the Exchequer Chamber. Since Bacon had been one of the Commissioners for drafting the bill for an act of union, and the leader in the matter, James left to him the burden of arguing the case of the Post Nati before the judges. Of the presentation he made there, Coke said that he 'spake not out of his head and invention,' but that he had diligently searched the precedents, as was necessary that one should do, 'for out of the old fields must come the new corn.'

After long argument, twelve of the fourteen judges decided that the union of the crowns naturalized those born after the accession of James to the English throne, and that they were therefore entitled to hold real property in England.

James did not seek to influence the opinion of the judges, probably feeling sure of what the decision would be; but it is worthy of note that Coke, in his report on the case, says, 'In this proceeding these things were observed, and so did the Chief Justice of the Common Pleas publicly deliver at the end of his argument in the Exchequer Chamber: First, that no commandment or message by word or writing was sent or delivered from any whatsoever to any of the judges to cause them to incline to any opinion in this case; which I remember, for that it is honorable for the State, and consonant to the laws and statutes of this realm.'

In a case decided a few years later, Coke was to have a different comment to make on the practice here hinted at of consulting with the judges prior to the trial or decision of a case.

IV

IN the course of Coke's struggle with James and with the ecclesiastical courts, he had enunciated the underlying legal principle which guided him in the decision of many other cases involving questions of public interest — the supremacy of Parliament and of the law, over even the King himself — a doctrine that certainly had not before then been so clearly declared during an era of strong royal prerogative.

To say that Coke was stubborn is to indulge in a characterization with which others may or may not agree, depending upon the viewpoint, for if we agree with the holder of an opinion, we applaud the firmness with which he adheres to his principles; but if we disagree, then not uncommonly we say that he is stubbornly holding an opinion that has no basis either in reason or in fact. Therefore, whether we say that Coke was commendably firm in his adherence to principle, or whether we characterize him with the less pleasing adjective of stubborn, there is no doubt that the opposition which he encountered in the struggle with James and the ecclesiastics made him all the more determined in his views.

In Coke's succeeding years on the bench, he was to show that he had more legal philosophy than Bacon and others of his time credited to him, for Coke considered every important public question from the standpoint of the supremacy of the law, from the standpoint that the common law is the heritage of every British subject, who cannot be deprived of the rights it gives him excepting by his own consent manifested through an act of Parliament.

Some of the cases which are important, either because of their effect on Coke's career or of their establishing a constitutional principle in English law, will be briefly reviewed.

V

IN Coke's time the judges not infrequently acted as legal advisers of the Crown.

London was growing rapidly, and the problem of the increasing urban population bothered the Government. By the year 1610, so many new houses had been erected that the King issued a proclamation forbidding any further building in the capital.

Another matter received government attention about the same time. People were complaining of the high price of food-stuffs. In the fashions of the day both men and women were using starched clothing to such an extent that it was deemed desirable to prevent consumption of wheat for the manufacture of starch, and to accomplish this end, a proclamation was issued prohibiting the use of grain for any other purpose than that of supplying food.

The Commons complained of these proclamations, both of which provided penalties, as grievances, and petitioned the King to grant relief.

On September 20, 1610, Coke was requested to attend before the Lord Chancellor, the Lord Treasurer, and certain other officers. Lord Salisbury asked Coke for his opinion as to the validity of the proclamations. Coke answered that this was a question of great importance, which he had not heard of until that very morning, as both proclamations were promulgated after the time he had been Attorney-General. He therefore requested permission to confer with his associates, and stated that he would then make answer to the King according to law and reason.

Evidently the Lord Chancellor sensed Coke's reaction, for he said that every precedent had a first commencement, that he would advise the judges to maintain the power of the prerogative of the King, and, in cases in which there is no authority and precedent, to leave them to the King to order according to his wisdom and for the good of his subjects. The Lord Privy Seal also deemed it necessary to warn Coke of the answer which was desired, saying that 'the physician is not always bound to a precedent, but to apply his medicine according to the quality of the disease.'

Coke answered, 'True it is that every precedent hath a commencement; but when authority and precedent is wanting, there is need of great consideration before that anything of novelty shall be established, and to provide that this be not against the law of the land, for the King cannot change any part of the common law, nor create any offense by his proclamation which was not an offense before, without Parliament.'

Coke's request for time to confer with his associates was

finally granted, and after consultation between the two Chief Justices, the Chief Baron, and others, it was resolved that the King could not by his proclamation create anything an offense which was not an offense before, although the King for the prevention of offenses might by proclamation admonish his subjects to keep the laws, upon penalty of punishment provided by the law.

VI

BARTHOLOMEW LEGATE and Edward Wightman were burned as heretics in 1612. Let one remember that in that year of Christian grace, a preacher of the gospel of love and charity said, 'Before we set down his [Legate's] pestilent opinions, may writer and reader fence themselves with prayer to God against the infection thereof.' With this warning, let the grave nature of their offense be examined. Legate said the Nicene Creed did not contain a profession of the true Christian religion, and that Christ was not God of God begotten. For the maintenance of these opinions Legate had long been imprisoned. John King, Bishop of London, finally tried him in his Bishop's Court as an obdurate, contumacious, and incorrigible heretic, and found him guilty.

Edward Wightman had also been convicted of heresy, likewise in the Bishop of London's court. Since the ecclesiastical courts had no means of enforcing their orders and decrees, it was necessary for them to certify the conviction to the Chancellor; and a writ was issued out of Chancery, directed to the Sheriff, to put into execution the decree of the ecclesiastical court.

In these two cases, it was proposed to certify the convictions to the Chancellor, and have the writ *de heretico comburendo* issue. Before this was done, Coke was consulted, and he gave his opinion that a conviction of heresy before the Bishop's Court was not sufficient to justify the issuance of the writ by the Chancellor; that before such writ might lawfully issue, there must be a conviction before the Court of High Commission. But Bacon, Hobart, and certain of the judges declared that conviction in the Bishop's Court would be sufficient, and accordingly the writ was issued, and the unfortunates were burned.

VII

SIR WILLIAM CHANCEY had been charged with adultery and with having expelled his wife from his house without providing maintenance for her. He was brought before the Court of High Commission, which ordered that he make such submission as should be directed for the adultery committed by him, and that he allow his wife a 'competent maintenance.' For his refusal to obey this order, he was committed to the Fleet. He obtained a writ of habeas corpus, returnable before the Court of King's Bench, which decided that adultery, not being an 'enormous' crime, could not be punished by the Court of High Commission, and that, as to the provision for maintenance for his wife, this was so indefinite in its terms that it could not be performed.

In the argument of this case, the judges admitted that it had been the custom for twenty years to imprison in such cases, without any exception having been taken; but, they said, when the matter came before them, they ought to judge according to the law. They pointed out that the Court of High Commission could ordinarily proceed only by ecclesiastical censures, except that in cases of 'enormous' crimes they had the right to order fine and imprisonment. If the power of the Court were not thus limited, there would be nothing to prevent it from confiscating the lands and goods of the King's subjects; and, as no writ of error lay from the Court of High Commission, this would be oppressive upon the Commons. They pointed out further that until Egerton's time, the Court of High Commission had not enrolled its patent in Chancery or any other place; and that until recent times, no one had known exactly what its jurisdiction was. They, therefore, decided to allow Sir William Chancey at liberty on bail.

Abbott, the new Archbishop, immediately appealed to the Council, urging that this was but one more illustration of the aggressions of the common law against the ecclesiastical jurisdiction. By command of the King, all the judges of England assembled in the Council Chamber. Coke had prepared a treatise upon the jurisdiction of the Court of High Commission, which he produced, the substance of which was the same as the argument of the judges just stated. The other judges agreed with Coke. A few days later, the Council sent for the

judges of the Common Pleas only, and the matter was again debated, Ellesmere, the Lord Chancellor, opposing the judges of the Common Pleas; but all the judges remained constant to their former opinion.

James still was not satisfied. He had the Council send for the Chief Justice of the Court of King's Bench, the Chief Baron of the Exchequer, and their respective associates. The Chancellor again argued for the jurisdiction of the Court of High Commission, and again was unsuccessful. As a last resort, James called a session of all the judges, at which he himself presided. He first excluded the judges of the Common Pleas from the conference, because, as the Lord Treasurer said, 'They had contested with the King.' Under this harassing procedure, some of the judges gave way. After about two and a half hours, the judges of the Common Pleas were admitted.

James finally announced that he would reform the High Commission at divers points and reduce it to certain spiritual causes. How important the concession was may be inferred from the remark of the Lord Treasurer, 'That the principal feather was plucked from the High Commission, and nothing but the stump remained.' And he who had plucked the feather was Coke — a fact which James did not soon forget.

VIII

THE death in August, 1613, of Sir Thomas Fleming, who had been Chief Justice of the Court of King's Bench, gave Bacon another opportunity to press the King for advancement. He was then Solicitor-General and Hobart Attorney-General. Since Bacon could not gracefully ask for promotion over the head of Hobart, he necessarily had to ask advancement for both of them. 'In all humbleness,' he indulged in the hope that His Majesty 'will not think of any others but your poor servants, your Attorney and your Solicitor, one of them for that place.'

Bacon pointed out that he had served 'an apprenticeship full seven years and more' as Solicitor; that he was fifty-two years old, and that he had continued as Solicitor later than any one else had ever done without preferment. He hoped that His Majesty would promote the Attorney-General to the

Chief Justiceship and the Solicitor to Attorney-General; or, if Hobart should refuse, that the King would promote the Solicitor to Chief Justice.

After Bacon had written this letter, he had an inspiration, or some indication of the drift of the political winds, for he then elaborately set forth 'reasons why it should be exceeding much for His Majesty's service to remove Lord Coke from the place he now holdeth to be Chief Justice of England, and the Attorney to succeed him, and the Solicitor the Attorney.' He urged upon the King that if Coke were promoted to Chief Justice of the King's Bench, with a promise of a seat in the Privy Council, 'Coke will thereupon turn obsequious' (i.e., compliant). 'Besides,' he says, 'the removal of my Lord Coke to a place of less profit, although it be with his will, yet will be thought abroad a kind of discipline to him for opposing himself to the King's causes, the example whereof will contain others more in awe.'

Even Bacon did not realize the full toughness of the fiber of grim old Coke! James fancied the proposal, with only the modification of immediately admitting Coke to the Privy Council. So Coke became Chief Justice of the King's Bench October 28, 1613; and the next day Sir Henry Hobart, Chief Justice of the Common Pleas; Bacon, Attorney-General; and Henry Yelverton, Solicitor. Coke entered the Privy Council November 4, following. The enforced promotion grievously hurt Coke. He felt that, as Chief Justice of the Court of Common Pleas, he could and did act in many ways as arbiter between the King and the people. And the fact that the new position, as Bacon had remarked, was less profitable, did not recommend it to Coke. Probably, too, he enjoyed the civil cases of the Common Pleas more than the criminal work of the King's Bench. On parting from his associates in the Common Pleas, he was overcome with emotion to the point of tears, and all the Bench and most of the officers of the Court had tears in their eyes.

'Still the spider draweth poison. Some such venoms there be.'

IX

IN 1614, Puritans as well as Catholics felt aggrieved at what they considered the ill manner in which James treated

them after the construction their hopes had placed on his words on coming to the throne, from which they had each anticipated favor. Edmund Peacham, a Puritan clergyman, made some charges against his bishop, for which he was brought to answer in the Court of High Commission. The invariable accompaniment of an arrest under such circumstances was the ransacking of the lodgings and belongings of the accused. On this occasion the searchers found papers in Peacham's house of what appeared to be a sermon he had written, which took the turn of a philippic against the Government, with a warning of the dire consequences which would result unless there was immediate relief from religious oppression. The Privy Council decided to hold Peacham upon a charge of high treason. First, however, he was tried in the Court of High Commission for his libel against the bishop, was found guilty, and sentenced to be deprived of his orders.

Then the Council directed an examination of Peacham to discover whether there was a plot of any kind against the King, and whether he had any co-conspirators. A warrant issued on January 18, 1614, for his examination, and one of his examiners was the philosopher Bacon — or should he, in justice to his philosophical reputation, which has not in any wise been impeached, be referred to in this connection as Attorney-General Bacon? At any rate, Bacon was present at the examination, and on January 19, 1614, sent a report to the King in which he stated: 'Upon these interrogatories, Peacham was examined before torture, in torture, between torture, and after torture; nothing could be drawn from him, he still persisting in his obstinate and inexcusable denials and former answers.'

Since the prosecuting officer of the Government had by means of torture obtained no evidence which would seem to justify a conviction, he adopted more subtle methods. Peacham would ordinarily have been tried before the Court of King's Bench of which Coke was Chief Justice. This court consisted of the Chief Justice and three associate justices; Bacon delegated three serjeants to consult the three associate justices, and reserved for himself a conversation with the Chief Justice.

The facts were to be presented to the several justices, each

spoken to separately without knowing that his associates were being consulted, and each requested to state whether or not he deemed the evidence sufficient to convict. Two of the justices agreed to give their opinions, the other said he wished to confer with his associates.

Bacon then consulted Coke. The Chief Justice was not responsive, but said he would consider the matter. Bacon called a second time, with various memoranda, both of fact and of law, bearing on the case. Then Coke said 'such particular and auricular taking of opinion is not according to the custom of this realm.' He pointed out that it was unfair to the accused to have the facts of the case presented to the justices, *in camera* and *ex parte*, with no opportunity for cross-examination, no opportunity for the presentation of the case of the accused, and with the judges practically bound to maintain at the trial in open court the opinion which they had previously expressed in private.

Coke, seldom at a loss for authority in the common law with which to support his opinion, continued: 'And to the end that the trial may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the Court, the judges ought not to deliver their opinions beforehand in any criminal case that may come before them judicially. And we read that in the case of Humphrey Stafford, that arch traytor, Hussey, Chief Justice, besought King Henry VII that he would not desire to know their opinion beforehand for Humphrey Stafford, for they thought it should come before them in the King's Bench judicially, and then they would do that which of right they ought; and the King accepted of it.'

In view of Coke's rebuke, Bacon did not bring Peacham to trial before the Court of King's Bench, but sent him to Taunton, before the Lord Chief Baron Tanfield. Little difficulty was encountered in obtaining his conviction there. Sentence of death was pronounced upon him, but it was not executed. He died in jail March, 1616. His sufferings under torture, and the extremely unhealthy condition of the jail, probably hastened his end.

X

THE Parliament of 1614 was dissolved in June, after two months of squabbling with the King, without a single one of its bills graced by royal assent. The unfortunate part of the situation for James was that the only purpose for which he had called Parliament had been left unperformed: it had absolutely failed to make any provision for money. The bishops, however, came to the King's assistance. Some offered their best plate to him, an offer greedily accepted, and soon all the great lords and public officials were following their example. It became known that any one who expected favors at Court would have to bring money to the Jewel House for the King's use.

In the further quest for money, some one suggested an appeal to the whole country for voluntary contributions. The advisability of this was discussed in the Privy Council, and the question of its legality referred to the judges. Coke had made a voluntary contribution; but as a judge, on the question of legality, he hesitated; and his hesitancy in this instance was one of the 'innovations' which Bacon afterwards charged against him.

It is odd, indeed, that Bacon, the philosopher, should have failed to apprehend what Coke, the legist, apparently did see; namely, that if the enforced loans, benevolences, and monopolies were permitted, the King would have a nearly complete system of extra-Parliamentary taxation, and Parliament would soon become an unnecessary assembly, with a consequent corruption of the State into a tyranny.

On June 23, 1614, Cambridge University elected Coke High Steward.

XI

IN the time of Coke, the jurisdictions of the several courts were still by no means clearly defined. It was one of the rapidly formative periods in English law. By nature, Coke desired power; his mind magnified the importance of every position he occupied. It was, therefore, not unnatural that, upon being made Chief Justice of England, he should seek by every means he could find to enhance the authority of that court. But underlying, as the solid and enduring foundation of his

conduct, he had a love for and admiration of the English common law that was born of a thorough knowledge of it and an appreciation of its substantial wisdom and beneficence. Time and again he had said that it was the right of every Englishman to have his claims adjudicated according to the law of the land; that the laws and customs of England cannot be changed without an act of Parliament, because the laws and customs of England are the inheritance of the subject, of which he cannot be deprived without his assent in Parliament.

Coke's conduct in his struggle with Lord Ellesmere over the jurisdiction of Chancery is quite understandable, and in keeping with his general view of the sphere of the common-law courts. Here, however, though he did not stand upon ground as solid as in the case of his struggle with the ecclesiastical courts, his ultimate defeat was not because the law was against him, not because of the unsoundness of the arguments he made as to the impropriety of permitting an appeal to Chancery after judgment had been obtained in the courts of common law, and even affirmed on appeal; but simply because the special facts of the cases in which he urged his points presented situations in which justice required a modification of the operation of the law that an allowance of the jurisdiction of Chancery afforded as the easy way in the particular instances, and so further developed the peculiar duality of the English legal system which men came completely to approve.

With this brief introduction, the narration will proceed to particulars of Coke's quarrel with the Chancellor. One Glanvil had sold to Courtney, a young nobleman, a jewel he claimed to be of the value of 360*l.*, which later proved to be worth only about 20*l.* How young Courtney ascertained this fact does not appear in the report of the case. Possibly a female acquaintance of the young nobleman was more familiar with the value of jewels than he. Glanvil also sold Courtney three other jewels of the reputed value of 100*l.* The transactions were on credit, and as security for the entire debt, Glanvil took a bond of 600*l.*, with one Hampton as surety.

Glanvil then had an action brought against Hampton on the bond, in which Hampton appeared and confessed judgment, Glanvil apparently paying the costs of both parties.

Afterwards, Courtney discovered, not only that he had been duped in the purchase of the jewels, but that a judgment had been obtained upon the bond on which he was the principal.

He immediately applied to the Chancellor for relief, and, before the matter came on for a hearing in the Court of Chancery, brought a writ of error to the Court of King's Bench to reverse the judgment on the bond, on the ground that it had been procured by fraud.

The writ of error came on for hearing first, and the judgment was affirmed. Thereafter, the hearing was had on his appeal to the Chancellor, and, upon a full hearing, the Chancellor ordered that Glanvil should take back his jewels, and repay 100*l.*, and that he should then procure Hampton to release and acknowledge satisfaction of the bond, so that he should not pay as surety and take recourse over against Courtney. Glanvil failed and refused to obey the order, whereupon Courtney again had recourse to Chancery, and had Glanvil committed to the Fleet for contempt in failing to perform the decree of the Court.

Sojourn in the Fleet did not appeal to Glanvil. He immediately applied to the King's Bench for a writ of habeas corpus and upon the return of the writ, Coke and all the Court permitted him to be released on bail, pending the determination of his application. Finally, the Court decided that the writ of habeas corpus must be upheld, and that Glanvil must be discharged, upon the ground that after a judgment had been obtained in the Court of King's Bench, all parties should be at peace, unless the judgment had been reversed on appeal; and since in this case the judgment was affirmed on appeal, there should have been no further proceeding in any court.

Another case had been brought by William Allen against Alderman Bowles and others, in which the facts were similar to those in the case of Glanvil against Courtney.

Evidently Coke felt that the aggressions of Chancery upon the jurisdiction of the Court of King's Bench must be stopped, and that the stopping must be effective. To just what extent Coke concerned himself in the further proceedings is not entirely clear, but everything seems to point to the skillful direction of one well versed in the common law, with the probabilities strongly indicating Coke as the directing genius.

In 1353, during the reign of Edward III, there were so many persons who, after defeat in the ordinary courts of law, appealed to the papal courts, both in England and at Rome, that a statute was passed which enacted that any one 'which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the King's Court, or of things whereof judgment is given in the King's Court, or which do sue in any other Court to defeat or impeach the judgments given in the King's Court,' should answer for the contempt so committed, and if such offense were committed, a writ would issue, upon application duly made, requiring the offender to appear and answer the charge. The statute was called the Statute of Præmunire, from the first words of the writ, which were, 'Præmunire facias.'

After the habeas corpus proceedings of Glanvil, at the very next term of the Court of King's Bench, held at Middlesex, Mr. Justice Crook charged the Grand Jury that 'if any man after judgment given had drawn said judgment to a new examination in any other court,' this constituted a cause for præmunire, for which the parties, their counsel, solicitors, and even the judge hearing the matter *de novo*, might be punished. At the same term, both Glanvil and Allen preferred indictments against Courtney, Bowles, their solicitors and counsel, and even against the Master in Chancery who had heard the applications for relief.

The Grand Jury returned without an indictment, and Mr. Justice Crook immediately sent it back. It returned a second time with an *ignoramus*, and Coke, it is said, urged Glanvil and Allen not to despair; that he would have a better Grand Jury at the next term of Court. All this happened at a time when Ellesmere, the Lord Chancellor, who was then about seventy-six years of age, lay very ill and was thought to be dying. Sentiment went strongly against Coke. The entire matter was brought to the attention of the King, who, as usual, had Bacon make a report upon it.

Bacon in no uncertain terms affirmed the propriety of the appeal to the Chancellor's jurisdiction. He wrote to James that he counted the conduct of the Chief Justice 'a kind of sickness of my Lord Coke that comes almost in as ill a time as the sickness of my Lord Chancellor.' He pointed out that

'this is a great public affront, not only to the reverend and well-deserving person of your Chancellor and at a time when he was lying on dying, which was barbarous, but to your High Court of Chancery, which is the court of your absolute power,' and that such an affront 'may not pass lightly nor end only in some formal atonement, but use is to be made thereof for the settling of your authority and strengthening of your prerogative according to the true rules of monarchy.' Yet, he said, 'My opinion is plainly that my Lord Coke at this time is not to be disgraced, both because he is well habituated for that which remaineth of these capital causes, and also for that which I find is in his breast touching your finances and matters of repair of your estate.'

The 'Capital causes' Bacon referred to were matters arising out of the Overbury case, which will be related at some length a little later.

Upon the advice of Bacon and certain of the judges, James sustained the Chancellor's jurisdiction. Apparently, he concurred in Bacon's recommendation that Coke must be punished, but he also realized that the punishment involved some difficulty. The Court of Star Chamber investigated his invocation of the Statute of Præmunire and disapproved his conduct.

The King had not yet decided on the way to discipline his Chief Justice of the King's Bench when Coke proved again that he was a thorn in the side of Royalty.

XII

IN the time of James I of England, as ever before and since, the reward of political service was public office. So, in 1611, when the King was informed that one Michell was a staunch adherent and a faithful servant, James granted him the right to issue in the Court of Common Pleas certain writs, for which suitors, of course, paid the fees, which were the perquisites of the official.

Office was then regarded as substantially a vested property, which could be, and frequently was, bought and sold; a property which could not be taken away from the holder without granting compensation. Therefore, when Brownlow, who was already Prothonotary of the Court of Common Pleas with the

right to issue writs, found that his fees were diminishing, he sought legal aid. Counsel advised him to bring an action for 'office found,' which would require Michell to show by what right he held his office when the grant of it had already been made to Brownlow; and such an action was in fact brought in the Court of King's Bench, on which Coke sat as Chief Justice.

Michell, the interloper to be dispossessed, was able, whether with or without the aid of counsel, to reach the King's ear with his complaint, and succeeded in making it appear to James that the King's prerogative was being assailed; that here was a purely administrative appointment, made by the King himself, brought in question in the Court of King's Bench. Such a course, if permitted, would put that court above the King.

James was aroused. He consulted his Attorney-General, Bacon, to see what could be done about such a direct attack on his prerogative. Bacon appeared in the Court of King's Bench on the return day of the writ, and was about to move for additional time within which to plead on behalf of the King when a serjeant attempted to move his case first. Bacon remonstrated with the serjeant. Although Bacon and Coke were steadily hostile, yet each was meticulously careful to give the other his due. Coke, as Chief Justice, upheld Bacon, saying, 'No serjeant ought to move before the King's Attorney when he moves for the King, but for other motions any serjeant at law is to move before him, and when I was King's Attorney, I never offered to move before a serjeant, unless it was for the King.'

The matter of precedence settled, Bacon made his application for an adjournment within which to answer the writ on behalf of the King, and obtained it. Upon the return day, he presented to the Court of King's Bench from the Chancellor a writ *de non prosequendo rege inconsulto*, the effect of which would be to suspend all proceedings in the matter until after the Court had consulted with the Chancellor, and, through the Chancellor, had obtained the King's permission to proceed with the matter. Coke had the writ read in open court, and counsel for Brownlow moved for a copy of it, and time within which to argue upon it, both of which requests were granted.

Upon the return day, the argument took two phases. First,

Bacon argued that it was not even permissible for the Court to hear either counsel as to whether or not the writ was a proper remedy in that particular case. Coke ruled against Bacon. Then came the chief argument: Whether or not the King had the right in matters affecting his profit or prerogative to issue the writ *de rege inconsulto*, which would suspend all proceedings until the King's wishes were known, and that thereupon the King's wishes would have to be carried out. Bacon argued that this was the law. He wrote to James, saying: 'Your Majesty knoweth your Chancellor is ever principal counsellor and instrument of monarchy of immediate dependence upon the King, and therefore like to be a safe and tender guardian of the regal rights.'

Though Bacon's presentation of the matter in the Court of King's Bench occupied several hours, it was said that he did not lose a single hearer during the entire speech; and Coke was moved to say that it was a famous argument. But Coke's tendency was apparently towards sustaining the power of the Court: in many matters he had shown that his fundamental guiding principle was that the rights of British subjects should be decided by the rules of the common law in the King's courts, subject only to such right of appeal as the law gave. A flat decision upholding the right of courts to review such appointments would be disastrous to the King's claim of prerogative, and the parties compromised their dispute by Brownlow giving up his endeavor to oust Michell upon the promise of the King that in future he would not give his consent to the creation of any office which would lead to a diminution of the proceeds of the existing incumbent.

XIII

COLT and Glover began an action against the Bishop of Coventry. The action concerned itself with the question as to who had the right to appoint a cleric to a certain benefice. The King had appointed Bishop Neile to the place, *in commendam* — i.e., with the right to have its duties performed by deputy; and Colt and Glover disputed the right of the King to make such an appointment. The matter was heard in the Exchequer before all twelve judges of England. Since the King already had ample proof of the independent tendencies of Coke,

and feared that there might again be a demonstration of the supremacy of law over prerogative, he deputed Bishop Bilson, the Bishop of Winchester, to sit in Court while the case was being argued, and thereafter to report to him. The Bishop of Winchester thought the arguments of Serjeant Chibborne for the plaintiff derogatory to the royal prerogative. Apparently the good Bishop also felt from the trend of the argument that it was likely the judges would deny the King's right to make the appointment in this particular case.

This time James did not even make a pretense of legal process to carry his wishes into effect. He might have issued the writ *de rege inconsulto*, but perhaps because his last experience with it had not been highly successful, he instructed Attorney-General Bacon to communicate with Chief Justice Coke and request him and the other judges not to proceed to judgment until after they had conferred with the King. Bacon's letter bore date Thursday afternoon, April 25, 1616, and was as follows:

My Lord, it is the King's pleasure that because His Majesty's time did not serve to have conference with your Lords and his judges, touching the cause of commendams at his last being in town, in regard of His Majesty's other most weighty occasions, and for that His Majesty holdeth it necessary upon the report which my Lord of Winchester, who was present at the last arguments, by His Majesty's royal commandment made by His Majesty that His Majesty be first consulted with ere there be any further proceedings by arguments by any of the judges or otherwise; therefore, that the day appointed for the farther proceedings by arguments of the judges in that case, be put off until His Majesty's further pleasure be known upon consulting with him, and to that end that your Lordship forthwith signify his commandment to the rest of the Judges; wherefore, your Lordship may not fail.

And so I leave your Lordship to God's goodness.

Your loving friend to command

FR. BACON

Bacon had the letter delivered by one of his servants to Coke, who returned word that 'it was fit the rest of his brethren should understand His Majesty's pleasure immediately by letters from his said Attorney to the judges of the several Benches.'

If Bacon saw the coldness of this reply and the insult it contained, they did not in any way diminish his ardor. As he himself said, he felt that he could not 'scruple in matters of service.' He therefore wrote letters similar to the one he had addressed to Coke to the Judges of the Common Pleas, to the Barons of the Exchequer, and to the other three judges of the King's Bench.

Apparently, the judges discussed the situation. Since the letter they subsequently addressed to James was signed first by Coke, it may be assumed that he took the leading part in the discussion. Their letter was:

MOST DREAD AND GRACIOUS SOVEREIGN, It may please your most excellent Majesty to be advertised that this letter here enclosed was delivered unto me, your Chief Justice, on Thursday last, in the afternoon, by a servant of Your Majesty's Attorney-General; and letters of like effect were, on the day following, sent from him by his servant to us, Your Majesty's justices of every of the courts at Westminster. We are, and ever will be ready with all faithful and true hearts, according to our bounden duties to serve and obey Your Majesty, and think ourselves most happy to spend our times and abilities to do Your Majesty true and faithful service in this present case mentioned in this letter. What information hath been made unto you whereupon Mr. Attorney doth ground his letter, from the report of the Bishop of Winton, we know not; this we know, that the true substance of the case summarily is this: It consisted principally upon the construction of two acts of Parliament, the one of the 25th year of King Edw. III, and the other of the 25th year of King Henry VIII, whereof Your Majesty's judges, upon their oaths, and according to their best knowledge and learning, are bound to deliver their true understanding faithfully and uprightly; and the case between two for private interest and inheritance earnestly called on for justice and expedition. We hold it our duty to inform Your Majesty that our oath is in these express words; that in case any letters come to us contrary to law, that we do nothing by such letters, but certify Your Majesty thereof, and go forth to do the law, notwithstanding the same letters. We have advisedly considered of the said letter of Mr. Attorney, and with one consent do hold the same to be contrary to law, and such as we could not yield to the same, by our oath, assuredly persuading ourselves that Your Majesty being truly informed that it standeth not with your royal and just pleasure to give way to them: and knowing Your Majesty's zeal to justice to be most renowned, therefore, we have according to our oaths and duties at the very day pre-fixed the last term, proceeded, and thereof certify Your Majesty; and shall ever pray to the Al-

mighty for Your Majesty in all honor, health and happiness long to reign over us.

EDW. COKE
HENRY HOBART
LAUR. TANFIELD
PET. WARBURTON
GEORGE SNIGGE
JA. ALTHAM
ED. BROMLEY
JOHN CROKE
HUMPHREY WINDE
JOHN DODDERIDGE
AUGUSTIN NICHOLLS
ROBERT HOUGHTON

SERJEANTS' INN
25th April 1616

His Majesty lost little time in replying. He was highly indignant and waxed sarcastic. He wrote:

You might very well have spared your labor in informing us of the nature of your oath; for although we have never studied the Common law of England, yet we are not ignorant of any points which belong to a King to know.... We cannot be contented to suffer the prerogative royal of our Crown, to be wounded through the sides of a private person.... We therefore admonish you that since the prerogative of our Crown hath been more boldly dealt withal in Westminster Hall during the time of our reign than ever it was before in the reigns of diverse princes immediately preceding us, that we will no longer endure that popular and unlawful liberty, and therefore we are more justly moved to send you that direction to forbear to meddle in a case of so tender a nature till we had further thought upon it. We have cause, indeed, to rejoice of your zeal for your speedy execution of justice, but we would be glad that all of our subjects might so find the fruits thereof that no pleas before you were of older date than this is.... Our pleasure, therefore, is, who are the head and fountain of justice under God in our dominions, and we, out of our absolute power and authority royal, do command you that you forbear to meddle any farther in this plea, till our coming to town, and that out of our own mouth you hear our pleasure in this business....

Immediately upon his return to London, James called a meeting of the Council, which he required all of the judges to attend. James presided and did most of the talking. He told the judges that he objected to their letter, both in matter and form; in matter, both as to omission and commission. He

then particularized. As to omission, he objected to the failure of the judges to reprimand the serjeant arguing for the plaintiff, when the King's prerogative was attacked. He objected to the form of the letter, saying that if the judges had felt that they should not delay proceeding with the case, they should at least have written to the King stating their views, and awaited his pleasure.

After the King's declaration of what should have been done, all of the judges, except Coke, fell upon their knees, acknowledged their error, and humbly craved His Majesty's gracious favor and pardon.

Coke boldly argued that the stay required by the King was a delay of justice, and therefore contrary to law, and to the judges' oaths; that the case, as they meant to handle it, did not concern His Majesty's prerogative of granting commendams, and that the Attorney-General's letter did not specify a day certain as the day to which the matter was to be adjourned.

As to the last statement, James said that the judges themselves could have fixed a day, and as to the other arguments of Coke, that the judges should not have taken it upon themselves to determine a matter of the prerogative without consulting the King.

Coke replied further, again urging that the stay required was contrary to law and against the judges' oaths, and insisted upon his position so firmly that the King turned to the Lord Chancellor, Ellesmere, and asked his opinion. Ellesmere was not as courageous as Coke. He answered that, since the question had relation to a matter of law, His Majesty should consult his Learned Counsel first. Perhaps the Chancellor went on the theory that since he was administering only equity, he was not presumed to know any law.

Bacon did not hesitate in giving his opinion, and, as might be expected, supported the King. He argued that the judges were more likely to be breaking their oaths by proceeding in the manner they had adopted than by granting a stay, because their oaths required them to counsel the King, and, 'if they will first proceed in a business whereupon they are called to counsel, and will counsel when the matter is passed, there is no more than a simple refusal to give counsel.'

Bacon's ready support of the King angered Coke. He said that the Attorney-General should plead before the judges, and not dispute with them. Bacon replied that, by oath and by his office, he was bound to advise the King without fear of any subject or any body of subjects, judges or otherwise. The Lord Chancellor, by this time feeling that the argument was going against Coke, gained courage enough to declare that his opinion was the same as that of Bacon, and that the judges would have been perfectly justified in granting the stay requested.

James then asked each of the judges whether if at any time in a case depending before them His Majesty conceived it to concern him, either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly. With the exception of Coke, all the judges yielded, and acknowledged it to be their duty to do so.

Coke answered, 'When the case should be, he would that which should be fit for a judge to do.'

The King then asked the judges whether they proposed in their argument to touch upon the general power of the King to grant commendams. With the exception of Coke, they all meekly promised to uphold the royal prerogative, and further promised immediately to stop any barrister who presumed even to question it. No wonder James expressed satisfaction with the eleven judges.

The incident was by no means closed for Coke. He had already attended the Star Chamber two or three times in connection with the investigation which the Privy Council was making into his invocation of the Statute of Præmunire, and, as already indicated, the only question that seemed to be open in the Star Chamber was the nature and the extent of the punishment to be inflicted on Coke. By this time, it was determined that Coke must be deposed, and every possible means was sought to accomplish his removal. At the same time, some color of legality must be given to the proceedings. On June 26, 1616, he was called before the Privy Council, where he was charged with irregularities in connection with the Christopher Hatton estate, with being disrespectful to the King in the King's discussion with the judges, and was in-

formed that in his law reports he had promulgated many erroneous opinions, particularly concerning the King's prerogative.

On June 30, 1616, he was again summoned before the Council, and by order of the King was suspended as a member of the Privy Council and was prohibited from going on the summer circuit. He was also advised to look over his reports and to correct them wherever necessary. On July 18, the King made a formal order sustaining the jurisdiction of the Chancellor in the *præmunire* case. By direction of the Chancellor, this order was recorded in the Rules of the Chancellor's Court.

Early in October, 1616, Ellesmere and Bacon, assisted by certain serjeants, had Coke appear before them. Ellesmere informed Coke that, since the entire summer vacation had been at his disposal for the revision of his reports, the King had directed them to receive an account of this work. Coke answered that his reports consisted of eleven books, containing about five hundred cases; 'that heretofore, in other reports which he revered much, there had been found, nevertheless, errors which the wisdom of time had discovered and later judgments controlled,' and thereupon indicated five trivial errors in his reports. All of these proceedings Bacon reported to the King, expecting that the charges against Coke would be tried either by the Privy Council or by a special committee of it.

Evidently the course Ellesmere and Bacon adopted in the matter was not satisfactory to the King. He had Villiers write to Bacon, disapproving of their action, first, because it would hold the matter open too long, and second, because 'although the King did use the Council's advice in dealing with the Chief Justice upon his other misdemeanours, yet the King will not surrender his prerogative in making the Council judge whether Coke should be turned out of his place.'

Strong as Bacon was for the prerogative, this seemed too much. Perhaps his views did not entirely blind him to the fact that, as a matter of ordinary fairness, Coke ought to have an opportunity to know the specific charges made against him, and a further opportunity to answer them. Hence, he and Ellesmere wrote to the King, asking whether Coke should be charged with any crimes and misdemeanors — even they did

not know of any that had been committed. If he were to be so charged, before whom ought the charges to be brought, the Council, or some select commissioners? And, they added modestly, 'for we conceive Your Majesty will not think it convenient it should be before us two only.'

James decided that he would simply state at a meeting of the Council that for some time he had noted in Coke 'a perpetual turbulent carriage, first towards the liberties of his Church and his State ecclesiastical, towards his prerogative royal, and the branches thereof, and likewise towards all settled jurisdictions of all his other courts'; he would refer to the five meager corrections which Coke admitted should be made in his reports, which seemed 'rather in scorn than a satisfaction'; and that for these reasons he had decided to remove Coke from his office of Chief Justice of the Court of King's Bench. He thereupon directed Bacon to draft a supersedeas. Bacon, obedient as always, wrote to James on November 13:

I send Your Majesty a form of discharge for my Lord Coke from his place of Chief Justice of your Bench.

I send also a warrant to the Lord Chancellor for making a writ for a new Chief Justice, leaving a blank for the name to be supplied by Your Majesty's presence, for I never received Your Majesty's express pleasure in it.

If Your Majesty resolve on Montagu, as I conceive and wish, it is very material as these times are, that Your Majesty have some care that the Recorder succeeding be a temperate and discreet man, assured to Your Majesty's service. If Your Majesty without too much harshness can continue the place in your own service, it is best; if not, the man upon whom the choice is likely to fall, which is Coventry, I hold doubtful for your service; not but that he is a well-learned and honest man; but he hath, as it were, been bred up by my Lord Coke and seasoned in his ways.

There was no formal impeachment, no trial in the sense that we conceive of a trial — merely the regal fiat dismissing Coke from the Bench, November 15, 1616:

For certain causes now moving us, we will that you shall be no longer our Chief Justice to hold the pleas before us, and we command you that you no longer interfere in that office, and by virtue of these presents we at once remove and exonerate you from this office.

XIV

WITH the death of Salisbury in 1612, and that of Northampton in 1614, the King turned to his able Attorney-General, and the mind of Bacon appeared more and more in the management of affairs.

Thomas Egerton, Lord Keeper since 1596, with the full honor of Chancellor since 1603, was, by 1615, a man of about seventy-five, becoming infirm of body and weary of his work; and he began to ask for retirement, which, however, because of his learned service, the great respect in which he was held, and his support of the prerogative, James was reluctant to allow. Ellesmere, always friendly to Bacon, was ready to recommend the Attorney-General as successor in the Chancery. During one of the periods of illness of the Chancellor, whose recovery then seemed doubtful, Bacon set forth his qualifications to fill the probable vacancy in a letter, February 12, 1616. Besides relating his own suitability, Bacon stated his opinion of several other men in relation to the office.

Of Coke he said: 'If you take my Lord Coke, this will follow: first, Your Majesty shall put an overruling nature in an overruling place, which may breed an extreme. Next you shall blunt his industries in the matter of your finances, which seemeth to aim at another place. And lastly, popular men are no sure mounters for Your Majesty's saddle.'

The Treasury, put in commission on the death of Salisbury, had been given to Thomas Howard, Lord Suffolk, in July, 1614. Bacon had touched on the interest of Coke in Treasury affairs in an earlier letter, which has been quoted from referring to 'that which I find is in his breast touching your finances and matters of repair of your estate.' Apparently Coke, besides performing his duties as Chief Justice, had unofficially exerted himself in affairs of finance. He was a man of large wealth who managed his own affairs skillfully; and the letters of the times occasionally mention his interest in financial matters of the Government. Bacon's phrase about 'popular men' refers to the wide public approval of the stand Coke had taken as judge in matters of the prerogative. The Parliament of 1614, without being able to crystallize leadership, had shown insurgency developing.

Besides the able service, which spoke for Bacon, another in-

fluence on the King began to aid the Attorney-General. George Villiers had begun his career as King's Favorite, which was to make him finally the Duke of Buckingham, and a power rather in front of than behind the throne in two reigns. In the King's affairs this young man naturally came in contact with Bacon, quick to see advantage in the relationship, who began to give him the counsel of experience, which Villiers was willing to make use of in the matters he had to deal with as he rose in the King's favor. At this time a long letter from Bacon to Villiers gave more mature, larger advice than Bacon had given Essex.

The manner in which Bacon handled the delicate business of the trials of the Countess of Somerset, May 15, 1616, and of the disappearing Favorite, the Earl of Somerset, the day after, gave the Attorney-General a further claim on the King. Since Ellesmere had recovered from his illness, the office of Keeper of the Great Seal was not yet open. Apparently the King, however, had promised Bacon some reward; for on May 30, 1616, Bacon wrote Villiers, 'The time is, as I should think, or never for His Majesty to finish his good meaning towards me.'

James fulfilled his promise by giving Bacon the choice of an immediate appointment to the Council or a definite promise of the succession to Ellesmere. Since Bacon felt confident that he would get the Seal in due course, he took the immediate honor, and became a Councillor June 9, 1616, three days after Coke's arrogant insult to him at the hearing in the Council in the matter of Commendams, that the Attorney-General 'should plead before the judges and not dispute with them.' It was just three weeks after Bacon had taken his oath as Councillor that Coke was suspended from the Council, and four and a half months later was discharged from the Chief Justiceship.

Ellesmere, created, November 7, 1616, Viscount Brackley, a title which Coke's friends punned on as 'Breaklaw,' was finally permitted to resign, which he did, March 5, 1617, and died within a few days. Ten days after Ellesmere's resignation, Bacon became the Lord Keeper, to receive the full honor of the Chancellorship early in 1618.

In the see-saw of Fortune the beam had lifted Bacon near to

his summit and depressed Coke near to the bottom. Bacon had become Coke's 'better' at last.

XV

ON a night in the autumn of 1615, one of Coke's sons, and some of the son's friends, were gathered in the outer room of Coke's chambers in Fuller's rents at the Inner Temple. Though the Chief Justice had retired at his usual hour of nine and lay asleep in the inner room, the members of the younger generation had not followed his example of early to bed. About an hour after midnight, they heard a knocking. Coke's son opened the door and recognized in the man standing there an attendant at the Royal Court, who announced, 'I come from the King and must speak with your father.' The younger Coke answered, 'Even though you come from the King, yet you may not speak with my father now, for I know his disposition to be such that, if he be disturbed in his sleep, he will not be fit for any business; but if you will join us, you shall be welcome, and about two hours from now my father will rise, and you may then do as you please.' So the messenger joined the group and waited.

Punctual in his habits, at three o'clock Coke rang the little bell he had to summon his servant. The messenger then went in and gave the Chief Justice the King's letter. It contained an order that he issue a warrant for the arrest of Robert Carr, Earl of Somerset. Coke promptly made out the warrant, handed it to the Court attendant, bidding him tell the King that he would wait upon His Majesty that day; and in the afternoon he came to the King at Royston. In the mean time, the messenger had already arrived, found the Earl with the King, and served the warrant. Somerset was accused of participating in the murder of Sir Thomas Overbury by poison.

About two and a half years before this episode, James had proposed to appoint this Sir Thomas Overbury Ambassador to Russia. Amazingly, Overbury had refused the office, whereupon he had, April 22, 1613, been committed to the Tower for contempt, and there he had died on September 15 of the same year.

The threads of the plot of passion and intrigue which Coke had in his mind that morning must be traced to tell the story

of the work that engaged him for the eight and a half months from the middle of September, 1615, till just before his dismissal from the Bench, June, 1616.

One of the strands ran back more than fifteen years to the trial of Robert, Earl of Essex, when Coke as Attorney-General conducted the prosecution. The execution of the second Earl of Essex that February 25, 1601, left Frances Walsingham a widow with five children, three sons and two daughters. The oldest son, Robert, was then a boy of ten. During the rest of the reign of Elizabeth, the unhappy family lay under the at-taint.

Though the executed Essex's enemy, Robert Cecil, had prepared the way for James to come to the English throne, and James had turned to him in all matters of policy, the King remembered that Essex's communication with him in behalf of advancing recognition of his succession had been the shadow in the background of that trial and execution, and was ever well disposed towards those who had been of the Essex faction. He took the fate-buffed widow and the Devereux children under his protection. The widow married Richard de Burgh, Earl of Clanricarde, who was said to resemble Essex in person, and she escaped out of the storms of political intrigue for the rest of her days. James caused an act of Parliament to be passed in 1604, which restored the earldom to the Devereuxs, and so the young Robert, at the age of thirteen, became the third Earl of Essex.

Another strand going back to the Essex trial will bring to memory the old jealousies of Essex and the Howards, uniting the Howards with Cecil against the Essexians. Continuing to act with Cecil in the matter of facilitating the succession of James, Thomas Howard and Thomas Howard's uncle, Henry Howard, had joined Cecil at his spacious place of Theobalds for the first meeting of James on coming into England with those who had so skillfully smoothed the path of his progress to his new throne. The King kept Cecil in his post as Secretary and looked to him as his chief political adviser, promptly created him Baron Cecil of Essendene, Viscount Cranbourne the next year, 1604, and Earl of Salisbury in 1605. Henry Howard, James made a Privy Councillor, Lord Warden of the Cinque Ports, and Earl of Northampton; Thomas Howard, to

whose position as Admiral Elizabeth had added the High Stewardship of the University of Cambridge, the new King forthwith made also a Privy Councillor, gave him the post of Lord Chamberlain, and created him Earl of Suffolk. Only the year before Coke's autumn midnight messenger, James had, in July, 1614, bestowed upon him the positions of Chancellor of the University of Cambridge and of Lord High Treasurer of England. He had married a woman of boundless ambition, rapacity, and avarice, who had no scruples in personally taking a Spanish pension, which her more honest husband had refused, a pension given in return for information to be furnished.

This well enough intentioned Thomas Howard, Earl of Suffolk, and his scheming, unscrupulous, dominating wife, who had him much under her influence, had a daughter, Frances, a girl of ten when James became King of England, and showed himself, though so bountiful to the Howards, not ill disposed towards the Devereuxs. The young Robert, Earl of Essex, had been old enough at the time of his father's execution to take the impress of the horror of the event, and had grown into his youth silent and somewhat moody, giving no promise of his father's brilliant blossoming in the warmth of Elizabeth's favor, but seeming rather dull of mind and lacking in spirit. The idea of a marriage of the boy Earl of Essex and the girl Frances Howard was conceived. Through it the Howards would take the ancient enemy, the Essexians, into their camp, and remove one possible source of opposition to their power; and the King would unite two factions and further cement the foundations of his throne. Coke, in his 'Institutes,' states twelve years as the age of consent for a woman and fourteen for a man.

So, on January 15, 1606, the thirteen-year-old girl and the fourteen-year-old boy were married. Their wedding at the King's palace at Whitehall was the social event of the season. Ben Jonson wrote and Inigo Jones set forth for the occasion a masque of which the conceit was Hymen bringing in a bride and Juno a bridegroom for sacrifice to nuptial union. The sacrificial pair — grim prophecy! Though Ben had on his learned sock and somewhat bored the courtiers, Inigo's brilliant pageant of handsome men in crimson and beautiful wo-

men in white made society talk for weeks. The pretty little lady danced merrily with Prince Henry, who lacked a year of her own thirteen, while the moody boy husband looked on, and the King, Silenus for the hour, slobberingly sipping his sweet wines, beamed from his throne in maudlin happiness. After the ball, the boy Benedict went to his place of abode, and soon on his travels in Europe to complete his education, and the Earl and Countess of Suffolk took their daughter to their home, whence the youthful matron sallied to luxuriate in the court gayeties, where her beauty and charm won flattering attention that she thirstily drank, and with the draft an easy oblivion to the thought of the home returning of the youthful husband.

XVI

ABOUT a year after this boy-and-girl legal but unconsummated marriage, and just after the discovery of the Gunpowder Plot, a rather handsome young Scotchman with curly yellow locks, named Robert Carr, rode to a tilting at Court in the train of a fellow Scot, whom the King had enriched with royal gifts and ennobled with an English title, though with an express reservation of the right to sit in the House of Peers — James Hay, Earl of Carlisle. The reservation of the political rights did not greatly trouble Lord Hay; though a man of abilities, so long as he had the means and opportunity for display, he was well content. On the occasion of the tilting, he was enjoying one of the opportunities and rode to the scene with a string of retainers splendidly mounted, vividly clad and adorned. His shield-bearer, Robert Carr, one of the Kers of Fernihurst in Scotland, had been in his Lord's service in France, where Hay had served with the Scottish archers, bodyguard of the French King. As Carr rode forward to present Hay's device and shield to James, his spirited horse unexpectedly shied so sharply as to throw its rider, who broke his leg in the fall.

The King, at once full of solicitude for the fine-looking lad, had him carried to the house of the Master Rider at Charing Cross, and Dr. Mayerne, the royal physician, summoned to attend him. The eager eyes of Frances, Countess of Essex, seated in the gallery with her parents, marked the florid

beauty of the young man — *notat et designat oculis ad caedem*. While Carr was convalescent, the King frequently visited him, and struck by the young fellow Scot, spent hours talking with him and even played tutor in teaching him some Latin. The young fellow was shrewd enough not to stray off the opening golden path, and, supplied with funds from the royal purse, spent them liberally on garments on which James bestowed his kingly taste in color and fashion. James gave Carr a place in the household, first getting the Queen to request it, as was his wont on such appointments, so that his consort might be estopped from later finding fault; and soon was going about leaning on the shoulder of his young man, pinching his cheeks, smoothing out his garments, and asking his opinions. Within two years the King had told Lady Raleigh, humbly suppliant for the return of the manor of Sherburne, that he 'maun have it for Carr,' and had given this part of the forfeited Raleigh estates to his young Favorite.

The King asked Carr's opinion. But Carr was without training or experience in affairs other than the simple duties of a retainer to Lord Hay. There were many who were ready to serve with advice the man who was growing so rapidly under the nurture of the sovereign. Bacon, who had the keen scent of a hound for a rising man, was ready; the wily and astute Howard, Earl of Northampton, was ready; but Carr, by no means lacking in natural shrewdness, was clever enough to see that they were more likely to use him than he them. One who seemed less dangerous because not so influential, who would have to depend more upon him, for whom, besides, he felt a real fondness, came at hand.

Thomas Overbury, a young man twenty-seven at the beginning of Carr's rising fortunes, some six years Carr's senior, was the oldest son of Sir Nicholas Overbury, a Gloucestershire country gentleman, a Bencher of the Middle Temple, Recorder of the City of Gloucester, and Judge in Wales. The father sent his son to Queen's College, Oxford, where the rather brilliant lad became Bachelor of Arts at the age of sixteen, then entered the youth at his own Inn of Court, the Middle Temple. There Thomas Overbury studied law and continued the pursuit of literature begun at Oxford. There he saw the already famous figure of Coke at the neighboring

Inner Temple, going and coming about his business of Attorney-General for the four years preceding the Essex trial; then, Sir Nicholas, with an eye, like so many others, in those last years of Elizabeth, to the source from which future favors were likely to come, sent his promising son on a visit to Edinburgh with a letter of introduction from the great Robert Cecil, who was at that time maintaining his secret line of communication with the King of Scotland. While Overbury was visiting in Scotland, the boy Robert Carr, about to go to France with Lord Hay, and just at the age for hero-worship, came to know and greatly admire the able young Englishman.

James entrusted Overbury with a letter to Cecil, who thereafter from time to time gave the young man some minor employment, but not sufficient recognition to satisfy ambition, and Overbury left London for travel on the Continent. He returned from his journeying to find rising under royal favor the young man whom he had met as a boy in Scotland, and he sought and gained a renewal of the friendship formed some seven years or so earlier.

Carr soon leaned heavily on the knowledge, experience, and literary ability of his older friend, and Overbury, on his part, saw in the swiftly growing fortunes of the young Scotchman a prospect of more rapid advance for himself than in the slow progress that would be the best that he could look for in doing whatever Cecil should set for him to do.

Overbury, with entire readiness, supplied Carr with the opinions which Carr gave the King as his own; and, as they showed a capacity which the King recognized, James more and more turned over to the Favorite correspondence and business, which he passed on to Overbury, and, on getting the results of Overbury's diligence, passed them on to the King.

As Carr ascended, he pulled Overbury up also, at a respectful distance behind. Carr, abundantly supplied for himself by the King, procured for his *Fidus Achates* a lease from the crown of some salt works at Droitwich, and in 1608 got him knighted. Those who found it politic to cultivate the favorite also paid attention to the favorite's man; and even Robert Cecil, by that time Lord Salisbury, arranged the bestowal of some minor offices on Overbury's young brothers.

Sir Thomas suffered one setback, however. The Queen never liked him, and did not conceal her dislike; and Overbury's greatest weakness was a lack of the ability to conciliate. One day the Queen looking out a window saw Carr and Overbury walking in the Palace Garden, and remarked, 'There goes Carr and his Governor.' Just then it chanced that Overbury burst into a loud laugh; and the Queen, thinking the laugh was at her, complained, and had Overbury committed to the Tower — a brief foretaste of that abode — whence he was released after explanations. Later, however, Overbury leaked the contents of some of the Queen's letters to the King, and Sir Thomas, in 1609, found it expedient to travel on the Continent again for a time. On his return he began to achieve literary distinction, became a member of the circle in London of which Ben Jonson was the center, and wrote his series of sketches entitled 'Characters,' in some respects a precursor of the English novel. He could also turn a neat bit of verse.

XVII

FASCINATING Frances Howard, Lady Essex, grew to sixteen and seventeen prematurely wise in the ways of women's witchery. She captivated the serious and generally hard-working young Prince Henry, perhaps led him astray for a time, but lost him because she could not conceal her pursuit of the full-blooded, colorful Carr, whose person held her enamoured, whose preëminent power at the Court dazzled her imagination. The enchanting pretty devil's preference flattered and caught the King's Favorite in an eagerly pursued affair. Overbury's skill in composition was already making a reputation for Carr as a letter-writer in handling the King's correspondence, and the Favorite drew on his friend's literary ability in the more highly imaginative range of love-letters to thrill the heart of his young enamoured beauty. Sir Thomas, not yet scenting danger, was pleased to amuse himself in this exercise of his art. The girl's uncle, Henry Howard, Earl of Northampton, in whose view of life morals were somewhat one of the stupidities of the unintelligent, saw in the intrigue a means of netting for his clan the young adventurer Carr, whose rapid rise and great influence affronted the old English nobility and interfered with the ambitions of the Howards.



FRANCES, LADY ESSEX, AFTERWARDS COUNTESS OF SOMERSET
National Portrait Gallery, London

As the affair of Carr and Frances flamed high, the return in 1609 of her husband, the Earl of Essex, then about nineteen, thickened the plot. He returned, dreaming an epithalamium; but a much more attractive person than his fat cheeks and somewhat blunt ways presented could not have broken the spell that held the lady, who would have none of him. Her seafaring father and worldly-wise mother abused and cajoled her. The young husband departed to set his ancestral house of Chartley in Staffordshire in order, and told her parents that he would return to demand his bride. His falling ill granted her a further respite.

The frantic girl cast about for some means by which to keep afloat in her sea of trouble. She knew one Ann Turner. This woman, the widow of a physician, whom her socially ambitious extravagance had ruined, was credited with being the introducer of yellow starch, then popular as a foil for fallow complexions; and through the demand for her skill in designing costumes, she maintained a contact with society, found profitable employment as an intermediary, and in rendering other services in affairs such as that of the Countess of Essex and Carr. When Frances besought her help on this occasion, Mrs. Turner told how Dr. Simon Forman had furnished her philters and more mystical aid that had made her own lover, Sir Arthur Mainwaring, father of her children, who had departed for his country estate in Cheshire with the intention of abandoning her, turn and gallop twenty miles through a driving storm back to her arms.

Though, after imprisonment as a necromancer, and threats from the authorities of further prosecution for illicit practice, Simon Forman had obtained the degree of Doctor of Medicine from Jesus College, Cambridge, he continued at Lambeth the pursuits of an astrologer and other enterprise improper for a physician, with such advantage as some knowledge of drugs gave him. His personality had a strong attraction for many women, and he drew to his secret patronage numbers of those who were well known in the circles of the Royal Court. Mrs. Turner took Lady Essex to him, and he furnished her with powders for her husband, and assured her of the non-physical aid of magic. Knowing no other source of assistance, she turned to Forman with a simple childlike confidence, believed

his promises that she should some way have Carr; and they filled her with hope and determination to hold her husband aloof.

When the Earl of Essex recovered from his illness, he asserted and insisted upon his rights as a husband, and dragged his protesting, sulky bride down to his Chartley estate. The plight of the poor girl, forced to conform to a child marriage, which had meant no more to her than a bit of play-making, arouses pity; and the blame for her conduct must fall on those who coerced her, as much, at least, as on herself. But her parents were not the last of the line of heartless ambitious mothers and consenting fathers, and her blundering husband was not the last of stupid bridegrooms.

At Chartley, Frances shut herself in her rooms and refused to make even a public appearance as wife, until, on complaint of Essex to her parents, her brother came down to remonstrate with her. She and her husband were bitter and quarreled; and Frances, torn with longing for her lover, wrote to her 'Sweet Turner' and to her 'Sweet Father,' Dr. Forman, to whom she signed herself 'Your affectionate, loving daughter,' beseeching their aid. But Dr. Forman died while Frances was still at Chartley, and, though Mrs. Turner took up the matter with another defrauding quack, Dr. Saveries, the death of Forman seems to have made Frances lose some of her hopes, for she finally relaxed her frigidity towards her husband enough to go visiting with him at the houses of friends and to present the semblance, at least, of being a wife.

About two years passed for Frances and Essex in this unhappy manner when the approaching marriage of the Princess Elizabeth and the Elector Palatine recalled Essex, as one of the grandees of England, to London by the command of a royal invitation. The death of Prince Henry, November 6, 1612, did not delay the wedding, which took place on February 14 (Valentine's Day) following.

Return to London stirred hope afresh in the heart of the unwilling bride, who found new bedazzlements in the fame of her lover. With Overbury ever at his elbow, he had continued his brilliant progress. On March 25, 1611, the King had turned Sir Robert Carr into Viscount Rochester, not reserving from this Scotchman the right to sit in the English House of Lords,

continued to honor him by making him a Privy Councillor, and on the death of Cecil, May 24, 1612, had let him, as *de facto* Secretary, take over Cecil's ordinary work, glamour enough about the young man of twenty-five or so, where none was needed for the already smitten nineteen-year-old wife who hated her husband.

The near presence of her lover filled the girl with fresh purpose. She refused to live with Essex, even in appearance; and, under the protection of her great-uncle, Henry Howard, Earl of Northampton, to whom, since the death of Cecil, the King turned almost entirely for more mature advice than that of young Robert Carr, Lord Rochester, she bought the convenient house of Sir Roger Aston of Hounslow, from which she sallied forth to meet her lover at Mrs. Turner's dwelling in Hammersmith and elsewhere.

Northampton saw in the situation not merely an opportunity for tying the infatuated Rochester in the slender threads of a passionate intrigue, but a chance for binding him fast to the Howard interest by the stout rope of a marriage. Though the matter of a divorce of Frances and Essex would not be easy to manage, her marriage with Rochester would be worth the effort of all the care and adroitness necessary to attain it. Essex would have had enough of the bad bargain that had been made for him, would be weary of the months of sullen sulking and heaped abusive epithets of the woman, and would be feeling what Suckling, then a child, was to express in his lines

'If of herself she will not love,
Nothing can make her;
The Devil take her.'

Since Overbury was becoming difficult, Northampton, as a first move, had to see that he was bottled up. As long as the gallantry of Rochester with Lady Essex merely absorbed Carr's attention, and caused him to leave other matters all the more to Overbury's care, Sir Thomas had no objection, for it worked to his advantage; but the intrigue was throwing Rochester and Northampton more closely together; and if the young Scotchman turned to the wily old Howard for counsel, he would have less need for Overbury.

Sir Thomas expostulated with his employer, and, thoroughly alarmed on learning of the plan of divorce and new nuptials, was overheard at Whitehall, late one night, heatedly saying to Rochester, 'Well, my Lord, if you do marry that filthy base woman, you will utterly ruin your honor and yourself; you shall never do it by my advice or counsel; and if you do, you had best look to stand fast'; and Rochester was heard to answer as angrily, 'My own legs are straight and strong enough to bear me up, but, in faith, I will be even with you for this.' Such language from Overbury was little likely to restrain the thoroughly enamoured Rochester, and repeated to Frances, would enrage her to a venomously cold vindictiveness. When Sir Thomas wrote a poem called 'The Wife,' in which London could read Frances, and all London did read this literary swan-song, he grossly aggravated the insult he had already given.

If Overbury told what he knew, he would effectively spike the plan for the divorce. So the plotting Northampton devised a scheme for Rochester to appear to overlook Overbury's outburst, continue friendly, persuade the King to offer Sir Thomas the post of Ambassador at Moscow, and for Rochester to advise Overbury to refuse it, in the expectation of obtaining better things at home through the influence of his employer.

Overbury blindly fell into the trap, which worked perfectly. He had a stiffly arrogant temperament which deprived him of any faculty of making friends, and for this, the King disliked Sir Thomas, as well as feeling some jealousy of one so close to the Favorite, and would have been glad to send him as far away as Russia. When George Abbot, Archbishop of Canterbury, at the instance of James suggested to Overbury that he petition for the post, he declined; the King swallowed the affront and had the Lord Chancellor and Philip Herbert, Earl of Montgomery, Somerset's immediate predecessor as Favorite, directly offer the post to Sir Thomas, with the promise of the reversion of the position of Treasurer to the Chamber on his return from Moscow. Overbury, refusing the offer, was, on April 22, 1613, summoned to the Council, where he persisted in his refusal; and the angry King signed the warrant committing him to the Tower.

XVIII

WHATEVER Northampton and Rochester told the King, he fell in with the plan for the divorce and the remarriage of Frances to Carr, which, by the union of the Favorite with the old noble English family of Howard, would do something to quiet the antagonism aroused by the swift progress of the upstart Scotchman. Of course, all must be done decently and in order. On May 12, 1613, three weeks after the commitment of Overbury to the Tower, the King asked George Abbot, Archbishop of Canterbury, if he would serve as chairman of the committee on the divorce; and on Abbot's requesting that other bishops be included, the next day the King signed the order appointing Abbot, the Bishops of London, Ely, and Lichfield, and the civilian doctors of law, Sir Thomas Parry, Sir Julius Cæsar, Sir Daniel Donne, Master of the Court of Requests, Sir John Bennett, Dr. Francis James, and Dr. Thomas Edwards.

Though the claim that Essex and Frances had never consummated their marriage laid a foundation for the proceeding, it was not in itself sufficient; and a plea which would show an adequate cause for annulment presented difficulties. Since the only cause that could be made to accord with the situation was an allegation that Essex was impotent; and since Essex, though willing to be relieved of the lady, would not permit the full force of this imputation to be put upon him; the tenuous plea was devised, not that he was impotent generally, but only in relation to this particular woman, '*impotentia versus hanc*,' as the pleading had it; and this, Essex was prepared to let pass. Such a plea took by surprise and puzzled the good Archbishop of Canterbury, who was an honest and sincere man of strong Calvinistic tendencies, and had understood that the more general allegation would be made, and doubted if it could be proved.

Abbot, who grew suspicious of the good faith of the proceeding, thought the plea insufficient, and in this conclusion the Bishop of London, and of the civilians, Bennett, James, and Edwards stood with him; but the Bishop of Ely, after a talk with the King, and Sir Thomas Parry and Sir Julius Cæsar, after talking with Frances's father, found no difficulty with the pleading. Sir Daniel Donne needed no convincing to

favor the plea, and the Bishop of Lichfield appeared doubtful.

Essex put in a saucy answer, which the Commissioners refused to accept, and required him to plead again. When interrogated on the complaint, with respect to the allegation that Frances was *virgo incorrupta*, he smiled, and answered, 'She saith so, and she is so for me.' Seeing that the case was being manipulated, Abbot begged of the King to be relieved of duty, but James would not excuse him.

By stipulation of counsel the cause was put over from June 18 to July 2, on which the King expressed annoyance at the delay, but later required it to be put off to September 18; in the mean time he added to the Commission two men who were expected to be compliant, the Bishops of Winchester and Rochester. Abbot presented an extensive written argument in opposition to the validity of the plea, and remarked that the Essex example of the difficulty alleged seemed to be unique in England. The Archbishop found himself frowned upon at Court, grew sick and apprehensive of the business, but, with many forebodings, persisted, nevertheless, in maintaining the right as he saw it.

On the day before the decision, an argument of the King in favor of the sufficiency of the plea was presented, and on the day of the voting itself, word was brought that the King desired the Commissioners not to deliver lengthy opinions. Sir Julius Cæsar said he knew the King in fact wished only a yea and nay vote. The packed Commission thereupon, without giving opinions, voted seven to five in favor of the annulment. The decree, which left the parties to their consciences as to future marriage, was signed September 25, 1613.

James created Lord Rochester the Earl of Somerset, November 3, 1613; and on Sunday, December 26, the triumphant Frances was married to him at Whitehall by the Dean of the Chapel, the same man who had married her to Essex in the same place eight years earlier. The bride went to the altar with her hair down, symbol of virginity in the customs of the times. The world was at the wedding, and heaped gifts on the powerful Favorite and the daughter of the Howards, a pair whom it was desirable to conciliate.

Chamberlain in a letter to Mrs. Carlton, enumerating a long list of presents in gold, and ten thousand pounds in jewels

from the insolvent King, remarked that 'The Lord Coke was more moderate, for he gave but a fair basin and ewer.' Sir Ralph Winwood attended, dressed in a sinister black, conspicuous in the throng of vividly clad men and women. When Frances had mentioned to him that she had no horses suitable to drive to the entertainment which the City of London was giving in honor of the event, and asked for the loan of his famous double span of Flemish blacks, he, as a splendid gesture, made her a gift of them. Bacon, at his own expense of two thousand pounds, rejecting an offer of assistance, gave the masque presented on the occasion.

George Abbot, who had so stoutly opposed the divorce, deeming that he had done his duty and could honorably consider expediency somewhat, came among the guests, and set down in his record that at the wedding he received a pair of gloves, 'and so came home to dinner, where he sat with much comfort as being glad that, since things must be so, they were come to an end; and so prayed God to bless his Church, the King and Kingdom and himself, and that he might be free from so many vexations, as for a long space undeservedly had followed him.'

Since Sir Ralph Winwood, whose presence at the wedding has just been noted, was a firm friend and supporter of Coke, and will appear again in the tale of the lawyer's life, it seems appropriate on this introduction of the man to say something of his career up to the time of the Somerset marriage when he was about fifty years of age. He had entered Oxford at the age of fourteen, studied civil law, been a proctor at the University, and on the recommendation of the Earl of Essex, father of the man whose divorced wife he had just seen remarried, had become secretary to Sir Henry Neville, Ambassador to France.

When Neville, a partisan of Essex, was dismissed from his post on the Earl's execution, Winwood succeeded Sir Henry as Ambassador, and remained in the position until he had instructed his successor, Sir Thomas Parry, who was one of the doctors learned in the civil law on the Essex divorce commission. Then Winwood became Ambassador to the Netherlands, and in the course of his duties there, had to present the well-known amusingly meddlesome remonstrance of James, who prided himself on his theology, against the appointment

of the Arminian Conrad Vorstius as Professor of Theology at Leyden.

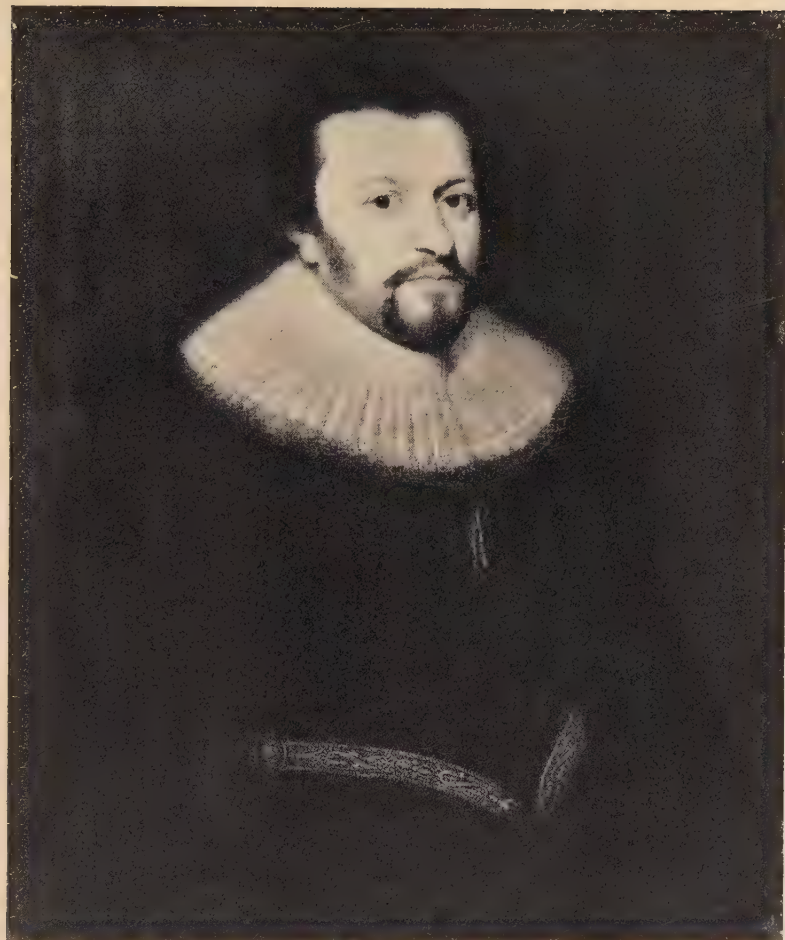
James had knighted Winwood June 28, 1607, had employed him on a mission to the Protestant Princes of the Empire, just before the marriage of the Princess Elizabeth to the Elector Palatine, and on the death of Salisbury, made use of Sir Ralph at home in a secretarial capacity, an employment which, except for a further short stay at The Hague, continued at the time of his appearance as wedding guest. Puritan and strongly anti-Spanish, he was not, for all his diplomatic experience, temperamentally conciliatory.

XIX

A FORTNIGHT after Overbury's commitment, the King dismissed the Lieutenant of the Tower, Sir William Waad, under suspicion of embezzling jewels of the imprisoned Lady Arabella Stuart, and at the solicitation of Northampton, appointed to the post Sir Gervase Helwys. Besides picking up 1400*l.* from Helwys for the appointment, Northampton apparently had some further understanding with him; for the very day Helwys entered on the performance of his duties at the Tower, he put in attendance on Overbury one Richard Weston, a man of sixty, an apothecary's assistant by occupation, who had been employed by the deceased Dr. Turner, and had served Mrs. Turner as a carrier of messages between Rochester and Frances. Sir Thomas Monson gave recommendations for both Helwys and Weston.

The far from celestial mind of Frances was full of wrath at the insults of Overbury. Though his imprisonment might seem enough for good Uncle Henry, who was doing so much to further the fulfillment of her desires, and enough for Robert, the desired one, she, since her mind wanted no chance of release or leaking walls to interfere with the divorce, marriage, and happiness ever after, on the same day that Helwys took command at the Tower, gave Weston her instructions and promises of reward for their fulfillment. Through Mrs. Turner she had arranged to procure poison from one James Franklin, who went under the title of Doctor; and for compensation he entered into the lady's plot against Overbury.

Three days later, Weston received poison to be adminis-



SIR RALPH WINWOOD
National Portrait Gallery, London

tered; and assuming, from the fact that Helwys immediately on taking charge of the Tower had appointed him in charge of Overbury, that the Lieutenant was in the plot, Weston asked Helwys, 'Shall I give it to him now?' From this, Helwys discovered that a plot was on foot to poison Overbury; but, realizing the power of the people back of it, contented himself with upbraiding Weston and taking the poison away; and all the evidence that the prodigious diligence of Coke gathered fails on analysis to prove that Helwys took any direct part in the poisoning, or did other than what he could to keep poison away from Overbury, or that his complicity in the affair was not limited to the retention of Weston, concealment of what he knew was endeavored, and probably suspected was being carried out in spite of his efforts.

Frances followed the old adage, 'If at first you don't succeed, try, try again,' and continued to send consignments of poison. At the same time, Rochester was providing Overbury with emetics and purgatives in the pretense of furthering the release of Overbury under a simulation of sickness by the prisoner that would make an application on his behalf more likely to be favorably received. Rochester may have hoped that Overbury would die under imprisonment and the weakening effects of drugs; but the evidence tending to show any participation in the poisoning plot, or any knowledge of it while it was going on, is slender. Overbury, however, actually took a good deal of poison, and grew seriously ill and near to death.

Northampton and Rochester shut Overbury off from every communication except to them. When his mother and his brother-in-law, Sir John Lidcote, came to London to see him, Rochester sent them a message that they had better return to the country, at the same time holding out a hope to the mother that her son would soon be released. His father later came to the Court to petition the King that medical aid be given his son; and on Rochester's joining in the request, the King sent the court physician, Dr. Theodore Mayerne, who called on the apothecary, Paul de la Bell, to assist in the treatment. When Dr. Mayerne left London for a visit to Bath, another court physician, Dr. John Craig, took up the case. How much, if anything, any of these men suspected of the true nature of the

malady under which their patient was suffering does not appear.

Meanwhile the spirit of Overbury, who had entered the Tower in the belief that the quarrel between him and the Favorite had been made up, and in reliance on Rochester to procure his speedy release, declined from confidence to doubt, and from doubt to bitterness and despair. From the first he wrote to Rochester beginning with complaint at the delay in his release; and finally, by September, in denunciation and threatening, saying that he had written at length the story of their relations. 'I have sealed it up under eight seals,' he wrote, 'and sent it by a friend of mine, whom I dare trust (taking his oath not to open it). I send to him and then to all my friends noble and gentlemen and women, and then to read it to them and take copies of it, and I vowed to have wrote the truth. This, I think you will not deny a word. So thus, if you will thus deal wickedly with me, I have provided that whether I die or live, your nature shall never die, nor leave to be the most odious man alive.'

This last 'Character' sketch by Overbury, has never been found. It was probably caught in the net of the Tower and destroyed.

At last, Sir John Lidcote, the brother-in-law, had been permitted to see Sir Thomas in the presence of Helwys, and found the prisoner so desperately ill that to Overbury's whispered inquiry if he thought Rochester was false, he gave a reassuring answer; though in fact, when he had spoken to Rochester, he had caught in a mirror the reflection of a smile on the face of the Favorite, who had pretended to sigh at the plight of his friend.

Under date of August 29, 1613, the Reverend Thomas Larkin wrote to Sir Thomas Puckering: 'Sir Thomas Overbury is like to run a short course, being sick unto death. The Lieutenant of the Tower and the physicians that were about him have subscribed their hands that they hold him a man past all recovery.'

Still, since Overbury had not died, for all the poison that had been sent to him, at last the plotters got hold of the apothecary Paul de la Bell's assistant, a boy named Reeve, who in the course, or pretended course, of the medical treatment, was

to administer an intestinal injection, and got him to put sublimate of mercury in the fluid injected. The poor wasted body of Overbury, reduced to skin and bone, and covered with sores from the treatment he had received, succumbed at last, and he died September 15, 1613.

There was a hurried inquest, of which the findings were never produced. Northampton saw to it that the body was quickly buried. Since there had been talk around the City, the rumor was spread that he had died of a loathsome disease. Chamberlain wrote to Carlton: 'Sir Thomas Overbury died and is buried in the Tower. The manner of his death is not known, for there was nobody with him, but the foulness of the corpse gave suspicion and leaves aspersion that he should die of the —— or somewhat worse. He was a very unfortunate man, for nobody, almost, pitied him, and his own friends speak but indifferently of him.'

Overbury dead, the Essex divorce granted, Viscount Rochester made the Earl of Somerset, the triumphant wedding — the year 1613 had been an eventful one for Frances Howard and Robert Carr. They moved from one of Somerset's dwellings to another, Chesterfield Park, Kensington, Ilesworth; they entertained magnificently, and the King came as guest; the King, whom the entrancing charms of the beautiful Frances, not chill to her new husband, made his newly created Earl somewhat neglect; the King, towards whom the alliance with the Howards made the Earl feel that he could now be somewhat domineering.

Still, even though Cecil was dead, the Howards and Somerset did not absolutely control James, and, March 29, 1614, the King appointed as Secretary of State the man in black at the wedding, Sir Ralph Winwood, whose gift of four black horses had availed him nothing; for Somerset and the Howards backed Sir Thomas Lake for the honor, and their conduct definitely turned the Puritan Winwood to the group where he naturally belonged, the nationalist faction in opposition to the Spanish alliance advocated by Northampton.

On a rumor getting about that Northampton corresponded with Rome, Bacon recommended that it be suppressed through the prosecution of some unimportant people caught spreading it, and was surprised in the Star Chamber proceed-

ings against them with the production by Abbot, Archbishop of Canterbury, of a letter in which Northampton had, to his correspondent, professed himself a Catholic wearing a Protestant mask.

But Northampton died a few weeks later, on June 15, 1614. His nephew, the Earl of Suffolk, father of Frances, was made Chancellor of the University of Cambridge, July 8, 1614, and Lord Treasurer of England, July 11, 1614, a post vacant since the death of Cecil in 1612. The vacancy in the office of Keeper of the Privy Seal, which the death of Northampton created, the King filled by appointing Somerset Acting Keeper June 30, 1614, and James also gave the Favorite the succession to Northampton's position of Warden of the Cinque Ports.

Since the rise of the handsome George Villiers affected the life of Coke much more directly in another direction, it will receive only brief mention at this point. Sufficient to say here that this new cheerfully engaging young man, all compliance, and backed by a cabal in opposition to Somerset and the Howards, already risen from the post of cupbearer to a knighthood and the position of a gentleman of the bedchamber, was beginning to wedge in between James and the Favorite, grown sulky, morose, and domineering at the Court, and no longer making glad the heart of the King.

With this mention of passing events necessary to understand the development of the Overbury matter, narration returns to the thread of the story. Reeve, the apothecary's boy, who had administered to Overbury the poisoned injection which at last took him off, sent out of England after the prisoner's death, fell ill in the Netherlands; and, when dying, confessed the burden on his soul of the part he had played in the murder. News of this confession in the summer of 1615 came to Winwood, who, however, kept his own counsel till he should have gone deeper into the matter and accumulated more evidence.

Through William Herbert, the Earl of Pembroke, Winwood had Helwys invited to a dinner which the Earl of Shrewsbury was giving in his honor. Sir Ralph had not previously met Helwys, and on the occasion of this dinner, when an introduction was proposed, Winwood said he should be glad to make the acquaintance if Helwys should clear up the suspi-

cions arising from the rumors that he knew more about the death of Overbury than he had disclosed. Helwys declared that he was free from any wrongdoing, and arranged for a conference at which he told Winwood his story in the matter; and thereupon, at Winwood's request, wrote the story to the King, admitting that he knew of the poison plot, that he had thought he had kept poison away from the prisoner, but that Weston had since confessed to him the poison injection.

XX

WHEN the King read this letter of Helwys, dated September 10, 1615, he directed Winwood to instruct the Lord Chief Justice to investigate, and Coke promptly examined Dr. Mayerne, Paul de la Bell, Helwys, Weston, Mrs. Turner, Dr. Franklin, and Sir Thomas Monson. Mrs. Turner was at once put under arrest, and Weston imprisoned. As the evidence against the Earl and Countess of Somerset developed, Coke requested the King to join others with him for the investigation, and the King appointed Lord Chancellor Ellesmere, the Duke of Lennox, and Lord Zouch.

On the death of Northampton, the deceased Earl's papers came into the possession of Sir Robert Cotton, and from him Somerset had procured the return of certain letters he had written about the imprisonment of Overbury, and burned some of them. Upon the arrest of Mrs. Turner and the imprisonment of Weston, Somerset ordered the seizure, in the cellar of the house of Weston's son, of a trunk which contained letters of Mrs. Turner to Weston, and these he destroyed. He next endeavored to get possession of a trunk containing letters belonging to Northampton which Sir Robert Cotton had deposited with a London merchant, who, however, knowing of the investigation, refused to deliver it to any one but the Lord Chief Justice Coke.

This attempt of Somerset to destroy evidence caused the investigating commissioners to make a request to the King that Somerset be put under arrest. It was the King's response to this request that greeted Coke on the morning of that night when the King's messenger sat in the chambers at Fuller's Rents to await Coke's awakening.

When the messenger at about ten o'clock in the morning

reached the Court, which was then at Royston, and handed the warrant to Somerset, who was with the King, the Earl angrily threatened to tear it up, but James told him that even the King must obey the law (doctrine Coke had been endeavoring to teach him), bade him go down to London, kissed him farewell, told him to return as soon as he could, but after he had gone remarked, 'I shall never see his face again.' And in the afternoon, when Coke came, the King told him to go to the bottom of the investigation and spare no one because of rank. Coke entered into the work with all his zeal, soon had visions of poisoning everywhere, and not only sought for evidence of poisoning in the death of Overbury, but also in several other entirely unrelated deaths. The most persistent of his near hallucinations was that Prince Henry had been poisoned. Indeed, at the time of the Prince's death a rumor had gone about that even touched the King as jealous of the Prince's popularity. There was not the slightest evidence, and historical investigation has entirely repudiated the idea. Coke apparently believed that harping on the idolized Prince Henry would be a popular thing to do, and was entirely blind to the fact that reviving these old stories would be prejudicial to the King and add one more item to the already long royal score of displeasure against him.

For a month Coke carried on the investigation with his enormous energy and industry, taking depositions by the score; and the day for his triumphant disclosure to the public of the great poisoning conspiracy arrived, the trial of Weston at the Guildhall, October 19, 1615. Lord Mayor Hayes, Justices Crook, Dodderidge, and Houghton, Sir Henry Montagu, then Recorder of London, and Serjeant Crew sat with the Chief Justice. In charging the Grand Jury Coke dwelt on the horror of the poisoning; with a slant at the Somersets, observed that adultery was the most frequent cause of it; cited the act of 22 Henry II, c. 9, that made poisoning a treason with a penalty of death by being boiled, and instanced the case of Richard Rowse scalded to death for the crime.

Weston was brought to the bar, and the Grand Jury returned an indictment.

Then the prisoner had the temerity to interfere with Coke's holiday by refusing to put himself on the country for trial,

which as the law then stood left the Court unable to proceed with the case. The judges assailed the obstinate prisoner for an hour. Coke believed that Yelverton, who had enjoyed the backing of Somerset and the Howards, had advised this procedure to Weston's counsel, with a suggestion of protection in pursuing it. It is interesting to note that Yelverton, though then Solicitor-General, had no part to play in the case against Weston or any of the others implicated in the poisoning. The prisoner was sentenced to the penalty of *peine forte et dure*, and had its particular process of *onere*, *frigore*, *fame*, explained to him with enough detail to chill his marrow:

Onere, that he should be 'pressed' by being extended or drawn taut and having weights put on his body.

Frigore, that he should be exposed naked in an open place near the prison.

Fame, that he should have only the coarsest bread to eat, and only water out of a puddle near the place of execution to drink; and the bread alone one day, and the water alone the next.

But Coke would not be balked of the sensational day he had planned by this annoying position the prisoner had taken. There were matters on hand far more important than the life of the wretched Weston. London must be told in a blare of publicity the events that so far had only been whispered around in rumor, and must know the salvation the Lord Chief Justice had prepared. Though no defendant was on trial, Coke instructed Sir Lawrence Hyde, the Queen's attorney, who was there to lead for the Crown, to open the case and proceed with the evidence as if the accused were being tried.

So Hyde told the story of the poisoning, his junior, Mr. Warr, declared the good character of Overbury, and another junior, on the instruction of Coke, read parts of the depositions. As a climax for the day the Chief Justice announced that the King had committed Somerset to the custody of Sir Oliver St. John, the Countess to the custody of Alderman Jones, and adjourned the case four days to October 23.

Different advice, or overhearing the preparation for treatment *onere*, *frigore*, *fame*, changed the mind of the prisoner, who on the adjourned day pleaded not guilty, put himself on the country, and saved Coke from the need of making a pre-

cedent, as he had decided to do if Weston remained obstinate. The Chief Justice had written to Winwood that he would treat refusal of trial as a confession. Fortunately the situation was left open to be provided for much later by the humane statute under which a plea of not guilty is entered for a prisoner who stands mute. The evidence was presented and the jury returned a verdict of guilty. In passing sentence, Coke referred to the 'shadow of greatness' that lay over the case, and by implication denied the truth of rumors that the purpose of the prosecution was to destroy Somerset.

Two days later, on October 25, 1615, Weston was hanged at Tyburn.

At the execution Sir John Hollis, Sir John Wentworth, Sir John Lidcote, Sir Henry Vane, and others came close to the scaffold and pressed him to declare truly whether or not he had poisoned Overbury. Weston answered that he died not unworthily, and that the Lord Chief Justice was an honorable and just judge. Proceedings were instituted in the Star Chamber against some of these men for contempt of court in producing the King's justice, and also against a Mr. Lumsden, who published an account of the trial.

Anne Turner came to trial at Westminster November 7, 1615. The lady dressed becomingly for the occasion and wore a pretty hat, which Coke sourly made her remove. Sir Lawrence Hyde, again leading for the Crown, read two letters written by the Countess, the 'Sweet Turner' letter and the letter addressed to 'Sweet Father,' Dr. Forman. He produced the obscene little figures Forman and Mrs. Turner had cast as part of the enchantment that was to keep Robert Carr true to his Frances.

Spectators had thronged to the trial, and in the midst of the proceedings the crashing of part of the overburdened scaffolding erected for seats injured a number of the crowd and added an element of fright to the drama of the day.

Mrs. Forman, widow of the doctor, jealous of the relations of her husband and the prisoner, had ransacked his belongings; and, eager to testify, was there with a mass of evidence, including a book containing a list of the doctor's clientèle. When this book was offered in evidence, Coke asked that it be shown to him, and, after turning the pages, refused to have it

read. It was gossiped about the Temple and in the town the next day that the Chief Justice had seen in it the name of Lady Hatton, his wife.

Coke could not keep his tongue from the vituperation to which it had become accustomed when he was the Crown's chief prosecuting officer; and in his charge to the jury he turned to the prisoner and told her that she was guilty of the seven deadly sins, that she was a whore, a bawd, a sorcerer, the daughter of the Devil Forman, and called on her to repent and become a servant of Jesus Christ and pray to him to cast out of her these seven devils. The jury found her guilty.

She was hanged at Tyburn a week later, November 14, 1615, and at her execution, jibing at her reputation as the introducer of yellow starch, the hangman wore yellow bands and cuffs.

A trial of those who had questioned Weston on the day of his execution took place in the Star Chamber, November 10, 1615. Bacon came forward, and continued from then on to take the first place in the prosecutions. The Court imposed various sentences of fine and imprisonment for contempt.

Sir Gervase Helwys came to trial at the Guildhall on November 16, 1615. Though he was better able to defend himself than Weston or Mrs. Turner, Coke produced a recent 'confession' of Dr. Franklin, which implicated him. The probable actual extent of his complicity has already been indicated. Franklin was ready to keep on swearing to anything so long as continued confessions would serve to prolong his own life. Helwys was found guilty and executed on Tower Hill, November 20, 1615. Franklin was then convicted and was executed at Tyburn, November 29, 1615.

Coke had ordered the arrest of Sir Thomas Cotton, who had surrendered to Somerset certain letters among the papers of the deceased Earl of Northampton, and the King began to feel that the prosecuting zeal of the Chief Justice had gone far enough afield. The next man to be tried was Sir Thomas Monson, against whom suspicion attached for his recommendation of Helwys and Weston. Early in the morning of the trial, another messenger from the King came to Coke at his Chambers in the Temple with an order that the trial should not proceed to sentences. Monson at the Guildhall presented

a courageous front and swore that he was innocent. Coke blustered 'You are Popish' at the prisoner, and told him that Garnet of the Gunpowder Plot had stood in the same dock, and that the courage of Helwys there had not saved him. The King's orders, however, were not disregarded. The prisoner was taken back to the Tower and later freed.

XXI

SIR OLIVER ST. JOHN had been relieved of the custody of Somerset, who had been taken to the Tower. The fact that Frances was with child delayed the trial of the Earl and Countess as accomplices. On December 9, 1615, Frances bore a daughter, baptized Anne, and was permitted to stay with her baby till March 27, 1616; then she also was taken to the Tower. When the new Lieutenant proposed to place her in the room which Overbury had occupied, she became hysterical, and was mercifully lodged in the quarters from which Sir Walter Raleigh had recently been released under circumstances that will be told a little later.

The trial of the Countess was set for May 15, 1616, and that of the Earl of Somerset for the day following. Bacon had taken charge of the proceedings, and Coke no longer played a prominent part. Demand for seats was so great that a pair sold for ten pounds, and a 'box' for fifty pounds. The conduct of Somerset, however, caused a postponement of the trials for ten days. He refused to confess, continued to profess his innocence, said that he would refuse to go to trial, and threatened that if he were taken there, it would be the worse for the King. Whatever the nature of that which Somerset could have to say, James evidently feared the disclosure. He had the Earl told that his life would be spared if he would confess, and later gave an intimation of even greater kindness. It was suggested to Somerset that the Countess was ready to implicate him, though this was not in the least true. Since he continued belligerent, it was decided that the trials should proceed, and that if the Earl should start to carry out his threat, he should be withdrawn from the bar.

On the ground that the case was not of treason, but of felony, and the sentence might be hanging, when the day for the trial of the Countess came, Coke objected to her being shown



EARL OF SOMERSET
National Portrait Gallery, London

the courtesy of having the axe carried before her; but Bacon suavely requested that the honor be shown in consideration of the high rank of the prisoner. The judges solemnly decided that it should be allowed. So Frances, who was dressed in plain black and white for the occasion, was ceremoniously rowed from the Tower to Westminster.

Lord Chancellor Ellesmere presided as Lord High Steward. The Judges of the King's Bench, Exchequer, and Common Pleas sat, and twenty peers formed the jury.

Bacon knew that the Countess had promised to plead guilty, but could feel relief that the programme was going according to plan when she actually did so. Though she came near the breaking point, when she caught sight of the Earl of Essex in the background, she stiffened and proudly walked out with her guards.

On the next day the Earl of Somerset, who, on a message from the King late that night, had finally agreed not to resist, was brought to the bar. Since the evidence of his complicity in the poisoning was weak, Bacon stressed the matter of motive and painted a picture of the sufferings of Overbury. Sir Henry Montagu continued with the evidence, of which the only direct item was a letter of Frances to Helwys, which contained the phrase, 'I was moreover bid to tell you that if he did send you any wine you might drink of it, for in it were no letters, but of the tarts and jellies eat not.' The word 'letters' was interpreted as poison, though it might have referred to emetics which Somerset sent; and 'he' was interpreted to mean Somerset, though it might as well, or better, have meant Northampton, or the whole matter of the reference to a third person might have been a fabrication of Frances. James had seen that it was not properly evidence against the Earl, though Coke in his investigation had accepted it as such; and Bacon had promised the King that it would not be introduced; yet Bacon let Montagu read it in evidence. Sir Randolph Crew covered the matter of Somerset's destruction of evidence. Though the Earl protested his innocence, he did not speak well in his own defense, and the peers found him guilty.

The King remitted the death penalty for both the Earl and the Countess, but let them stay in the Tower for six years before he finally pardoned them.

Frances died in 1632.

The child she bore before her trial grew up ignorant of her mother's crime. Lord William Russell, son of the Earl of Bedford, who had been a member of the syndicate to 'promote' Villiers, fell in love with her and insisted on marrying her against the protests of his father, who, when his son persisted and Charles I intervened in favor of the marriage, hoped to throw the matter off by demanding a dowry of twelve thousand pounds, but her father sold everything he had and provided the money. Somerset lived in retirement remote from Court till his death in 1645.

Robert Devereux, third Earl of Essex, the unfortunate husband of Frances, afterwards married Elizabeth, daughter of Sir William Paulet. They had a daughter who died in infancy. Later they separated. He served under Charles I in a naval expedition against France, which will be mentioned. He turned to the Parliamentary side in the Rebellion and was a general of the Parliamentary forces. He died in 1646, a year after his old-time rival.

BOOK IV

THE PATRIOT

. . . by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted that no freeman may be taken or imprisoned or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed but by the lawful judgment of his peers, or by the law of the land.

EDWARD COKE

BOOK IV

THE PATRIOT

I

As to whether Mary Beaumont, although of a good connection, occupied a position between maid and ladies' companion in the household of Sir George Villiers, of Broaksby, Leicestershire, or was the kinswoman of a neighbor in whose family she lived, information differs, but converges in the fact that she had no fortune other than her form and face and her ability to make advantage out of opportunity. Her beauty moved Sir George, soon after he was left a widower with three sons and some daughters, to give her twenty pounds for dress, and when adorned in it she looked so charming that he bestowed his own self upon her in marriage.

They had three sons and a daughter, the oldest John, the next George, born in 1592, Christopher, and Susan. Sir George died in 1606, leaving most of his fortune entailed on the children of his first wife. Mary Beaumont married twice more, and by her third marriage she became Lady Compton, wife of Sir Thomas Compton, a somewhat bibulous and rustical but wealthy country gentleman.

Out of her slender means of not more than two hundred pounds a year before her financially successful third marriage, she had special attention given to the dancing and fencing of her son George Villiers, a graceful, handsome lad with charm in his ways; and when he was about seventeen, she sent him to Paris for further polishing. In 1613, when he was twenty-one, he returned to England and hung about the edges of Court society, as his ambitious mother would have him do, at races and other gatherings that afforded opportunity for such contact.

Although somewhat threadbarely dressed, the attractive person of the young man with a charm of manner sometimes caught the eye of the King. The enemies of Somerset noticed this, and thought George Villiers gave promise enough of success to justify pushing him for the endeavor at royal favor.

A 'syndicate' consisting of George Abbot, Archbishop of Canterbury, William Herbert, Earl of Pembroke, and others of that party, soon including Winwood, which met at Pembroke's London place, old Baynard's Castle near the Fleet, saw that he was fitly furnished forth. They arranged for his presence on the occasion of the King's visitation in March, 1615, to Cambridge, where the new Chancellor of the place, Lord Suffolk, with his grasping wife and their then triumphant daughter Frances, Lady Somerset, in his party, gave lavish entertainment; and there at the presentation by the University of a play called 'Ignoramus,' a satire on the law and lawyers, incidentally lampooning Coke, which James hugely enjoyed, the King noticeably marked the graceful and now well-attired form and the delicately beautiful face of the young man.

Thereupon the syndicate succeeded in procuring for George Villiers a Court position as cupbearer. A moment of temper came near the undoing of their protégé. When he was eating his own meal at the gentlemen waiters' table, a minion of Somerset's spilled some soup on the white satin suit of Villiers, and the enraged wearer struck the offender. A blow within the verge of the Court carried the penalty of having the right hand of the striker cut off, with the mercy of having the stump seared by the Chamberlain, an office Somerset then held; and to James violence was especially obnoxious. Nevertheless, though Somerset, who had reached his sullenly arrogant stage, complained, the King, having the intercession of Abbot to serve as an excuse to the Earl, forgave the offense of the new handsome lad who had caught his fancy.

Next, Abbot, familiar with the King's insistence on having the Queen estopped from later complaint in affairs of the Court household, persuaded the somewhat reluctant Anne, wise in the ways of Favorites, and prophesying future arrogance in this one, to request for the young man the honor of knighthood, which the King bestowed April 23, 1615, and with it a Court promotion to the position of Groom of the Bedchamber and a pension of one thousand pounds a year. Though the syndicate thought it desirable that for the present Villiers should conciliate the fading Favorite, whom they hoped he would supplant, when the new knight went to commend him-

self to the Earl and to ask his favor, the angry Somerset answered, 'I will have none of your service, nor shall you have any of my favor. I will, if I can, break your neck, and of that be confident.'

But, as has been related, in the autumn of 1615, Somerset was taken to the Tower with his own neck in jeopardy, whereupon Sir George Villiers was given the Earl's duties as private secretary to the King, and in January, 1616, was made Master of the Horse. Only six months later he was installed a Knight of the Garter along with the Earl of Rutland, who afterwards became his father-in-law.

The King had to set up his new Favorite in fortune to match his honors, and offered him Sherborne, the Babington estate, which some years earlier James had told the suppliant Lady Raleigh he 'maun have for Carr,' and had taken from Raleigh for that purpose, making compensation, however; an estate which again became available for patronage through the attain of Somerset, May 16, 1616. The property was estimated as worth 32,000*l*. Villiers declined the particular gift with some phrase of not wanting to profit from the fall of his predecessor; and the King thereupon bestowed on him the forfeited lands, worth 80,000*l*., of Lord Gray, who had been prosecuted along with Raleigh for implication in the alleged plot to place Arabella Stuart on the throne, and imprisoned in the Tower, where he had died in 1614. Did the magnanimity of Villiers see the more profitable alternative? But he was not incapable of generosity of spirit.

Thus fitted with fortune to support further honors Villiers was, on August 27, 1616, elevated through simultaneous creation (Bacon, Attorney-General, drawing the patents), Baron Blechley of Blechley and Viscount Villiers; and in a little over four months more, on January 7, 1617, created Earl of Buckingham, and in that same month made a Privy Councillor. Along with his own advance he had procured the appointment of his brother Christopher to a household position at Court and a knighthood for his brother John.

It was inevitable that Villiers as successor to the imprisoned Somerset in the Earl's position next the King's person should early come in contact with Attorney-General Bacon. The course of Bacon's life during this period, his expectation of the

Chancellorship, the illness of Ellesmere, who still, however, continued in office, Bacon's correspondence with Villiers, appointment to the Privy Council (June 9, 1616), and appointment as Lord Keeper (March 7, 1617) have all been set forth in connection with the story of the suspension of Coke from the Privy Council, from his duties as judge (June 30, 1616), and his removal from the judgeship (November 15, 1616).

II

THE disgrace of Coke seemed for a time to have a favorable effect on his matrimonial affairs. With that nobility and strength of womanhood so often shown to men, Lady Hatton rallied to the support and comfort of her husband in his time of need. Let some extracts from correspondence of the time tell part of the story, reflected from the current gossip, of Coke in relation to her and to their daughter Frances. In this connection Chamberlain wrote to Carlton, eight days before Coke's suspension from Privy Council and judgeship:

The Lord Coke hath had much ado to bear off the storm; and, whether he be yet well cleared of it, is a question, though the general voice goes, that on Wednesday night he made his peace with the King, who had him coram, and in long confession. But the next day, the King coming to the Altar Chamber, and passing him over in silence, makes the world judge the best [worst?] of his case. The truth is, that his lady hath stood him in great stead, both in soliciting at the council table, wherein she hath done herself a great deal of honour, but, specially in refusing to do, but resolving and publishing that she would run the same fortune with him. Our good friend [Winwood] stood to him as long as there was any hope; but, when the King was so incensed that there was no more good to be done, he was fain to retire, and leave him to himself, to sink or swim. This is thought not to be the least motive of his safety, that it was told the King that he could not do him a greater honour than to take him down now; for, whereas he was nothing well beloved before, if he should suffer in this cause, he would be accounted the martyr of the commonwealth.

At this point, however, Coke's domestic difficulties broke out afresh from a new cause. Elizabeth's Lord Chancellor, Sir Christopher Hatton, owed the Crown, as stated by Camden, the sum of £42,139, 5s., monies from the receipt of tenths and first fruits, and for some time before his death the Queen had been demanding payment. Upon his death with the sum

still owing she sequestered his lands and leased them to reimburse the Treasury out of the rents and profits. In 1608, Coke and three others had acquired the lease from the Crown of this property and derived therefrom an income substantially in excess of the rent they had to pay. To assure the continuance of this lucrative holding, Coke had obtained from the living heir, another Sir Christopher Hatton, a covenant not to pay the Crown the debt of the Chancellor's estate and so release the land from its sequestration and bring to an end the profit Coke and his associates were making from it; and Coke put the Sir Christopher of the Jacobean period under bond to observe his covenant.

In some manner the transaction came to the attention of the Crown officers who were engaged in finding ways to harass Coke and help the King in his process of ousting the Lord Chief Justice; and along with his other troubles they began the prosecution against him, referred to in connection with his dismissal from the Bench, for defrauding the Crown by his hindering the payment of a debt due it. Coke resisted vigorously, and commanded Lady Hatton, who, as widow of Sir William Hatton, presumably had some rights in the property to be cut off, not to sign any instrument to comply with the command that payment of the debt should be made and the land relinquished to the heir. Lady Hatton was up in arms again. While this grievance of her husband's domineering rankled in her mind, she retaliated by stripping their houses of valuables and taking them away. Chamberlain, friend of Winwood's, and friendly to Coke, wrote the gossip to Carlton just after the event:

If Sir Edward Coke could bear this misfortune constantly, it were no great disgrace to him, for he goes away with a general applause and good opinion; and the King himself, when he told his resolution at the council-table to remove him yet, gave him this character, that he thought him no way corrupt, but a good justicer; with so many other good words, as if he meant to hang him with a silver halter. Hitherto, he bears himself well, but specially towards his lady, without any complaint of her demeanor towards him, though her own friends are grieved at it; and her father sent to him to know all the truth, and to show how much he disallowed her course, she having divided herself from him, and disfurnished his house in Holborn and at Stoke of whatsoever was in them, and

carried all the moveables and plate she could come by God knows whither, and retiring herself into obscure places both in town and country. He gave a good answer likewise to the new chief justice, who sending to him to buy his collar of S. S., he said he would not part with it, but leave it to his posterity, that they might one day know they had a chief justice to their ancestor. He is now retired to his daughter Sadler's in Hertfordshire, and from thence, it is thought, into Norfolk. He hath dealt bountifully with his servants; and for such as had places under him, he hath willed them to set down truly what they gained, and he will make it good to them, if they be willing to tarry and continue about him.

It is pleasant to get this picture of the great lawyer, whose less agreeable traits of character are conspicuous, showing dignity, kindness, and generosity in his time of stress.

Though Coke was in the process of losing his office of Lord Chief Justice, he had not lost those lands, tenements, hereditaments, those mortgage bonds of his, the value of which amounted to a large fortune. Lady Hatton, by her husband's settlements, as widow of the heir of Sir Christopher Hatton, Elizabeth's Chancellor, as daughter of Thomas Cecil, now Lord Exeter, heir of Elizabeth's Lord Treasurer, had something too, both in present holding and in expectation.

When Lady Compton, leaving her spouse to tiddle in the country, came in June, 1616, into the Court circle, she brought up in her person the Villiers reserve forces to take advantage of and to consolidate the territory her second son George had so swiftly and brilliantly won. Something must be done for John, the oldest, who was not, like George, successful in doing something for himself. Lady Compton was no mean strategist. Besides fitting forth a son on the career of King's Favorite, she had gone through three matrimonial campaigns on her own account, and still possessed an attractive person.

Among the possibilities of doing something for John, she and her already powerful son George saw an opportunity in Frances, daughter of Coke and Lady Hatton. In the summer of 1616, this child was fourteen years of age. Besides what her father and mother might do for her immediately in a marriage settlement, she had in expectancy on their deaths an estate settled on her valued at thirteen hundred pounds a year, and was the only child and heir of her mother. Sir John proposed, and negotiations with Coke began.

While these negotiations with the family of the Favorite were under way, as yet undisclosed to Frances or her absent mother, Coke found some balm to his spirit, sore with his difficulties, in the attitude which the King showed when Coke at this time visited him at Newmarket; an attitude which in part reflected the respect of James for his former Chief Justice, who had caused him so much annoyance; in part, a recognition of the value of the man's services if they could be made available; and, in part, the desires of the Villiers for an alliance for which Coke should pay liberally, and so relieve the King from being called on to provide for John Villiers. Edward Sherborn wrote Carleton, December 7, 1616: .

Sir Edward Coke was the last week with the King at Newmarket, and, kissing his Majesty's hand, he received some kind promise also which was to this effect: That although his Majesty had removed him from the place of Chief Justice for some special ends as holding him not altogether so fit a man to do his M. service in that office, yet his meaning was not to lose so good a servant, but that he would have him in remembrance and employ him in some other condition. Which, whether it will content Sir Edward, I know not, but I am sure the generality will be much affected to see him restored to honor.

A week later Coke visited the King again, and Chamberlain writing of the two visits said:

The Lord Coke was twice with the King at Newmarket, so well and graciously used that he is as jocund and jovial as ever he was. It is generally said he shall shortly be made a Baron; but some interpret this kindness to be but for the compassing of a match for the L. Villiers' brother with one of his daughters.

The jocund and jovial countenance soon fell again. Since the Villiers asked for 10,000*l.* in settlement, and Coke would not go above that sum in marks, which were two thirds of a pound, the negotiations at this time were broken off. Chamberlain, writing to Carleton March 15, 1617, said:

The Lord Coke is left in the suds, but sure it is God's doing according to the old saying, *perdere quos vult Jupiter prius demenat*. For, if he had had the grace to have taken hold of the match offered by Sir John Villiers, it is assuredly thought that, before this day, he had been Lord Chancellor. But standing on terms to give but 10,000 marks with his daughter when 10,000*l.* was demanded and sticking at 1000*l.* a year during her life (together with

some idle words that he would not buy the King's favor too dear, being so uncertain and variable) he hath let slip the occasion.

Gossip went astray in one thing. Coke had under James less prospect of the Chancellorship against Bacon than Bacon had of the Attorney-Generalship against Coke in that earlier year of Elizabeth.

With matters in this condition the difficulties of Coke and Lady Hatton over the Chancellor Hatton lands, and apparently other property rights, came to a head. Lady Hatton rallied her friends and stormed the Council Chamber with her charge that her husband was trying to coerce and defraud her. Again let the gossip of correspondence tell the story. Chamberlain wrote to Carleton May 24, 1617:

The Lord Coke and his Lady hath great wars at the Council table. I was there on Wednesday, but, by reason of the Lord keeper's absence, there was nothing done. What passed yesterday I know not yet; but the first time, she came accompanied with the Lord Burghley and his lady, the Lord Danvers, the Lord Derby, Sir Thomas Howard and his lady, with I know not how many more, and declaimed bitterly against him, and so carried herself, that divers said Burbage could not have acted better. Indeed, it seems he hath carried himself very simply (to say no more) in divers matters and no doubt he shall be sifted thoroughly, for the King is much incensed against him, and, by his own weakness he hath lost those few friends he had.

The Reverend George Gerard reported the incident somewhat more fully. Writing under date of June 4, 1617, he said:

The Lady Hatton accuses her husband by way of petition to the Council table for a contempt against the King for menacing her that if she set her hand unto those articles which the King had commanded him and my Lord of Exeter [Lady Hatton's father] he would make himself whole double and treble of her estate. The business concerned Sir Robert Rich and Sir Chr. Hatton. Upon the delivery of this petition Sir Edward Coke was sent for before the Council. A day was appointed for hearing of this business when I was present. It grieves me to hear such differences between man and wife; but counsel speaking on both sides, the business was extremely aggravated. She chargeth him of menacing her, of defeating of her jointure; of having a propriety in her purchased land which he will not relinquish. His counsel make answer and charge her of having disfurnished and taken away out of three of his houses all hangings, plate and household stuff, and also that she gave him to his face, or by letter, these unfit words of false treacherous villain.

Though the 'unfit words' may have been by letter, if they were it was not because the Spirited Lady lacked the courage to fling 'false, treacherous villain' full in the beard of her former Lord-Chief-Justice-of-The-King's-Bench husband.

But Coke and Lady Hatton came to a settlement of their property disputes and again seemed friendly. The Lady apparently managed to prevent her husband from carrying things all his own way. On the same day, June 4, 1617, that Gerard wrote Carlton, Chamberlain gave Carlton this later information:

Sir Edward Coke and his lady, after so much animosity and wrangling are lately made friends; and his curst heart hath been forced to yield more than ever he meant; but upon this agreement he flatters himself that she will prove a very good wife.

III

SOME place in the inner circle Coke must have for his soul's content, and he began to regret his endeavor to save 3333*l.* in a bargain over his fourteen-year-old daughter which had already seemed to incline toward him the favor of the Favorite, and with it the favor of the King. His deprivation of the activities he enjoyed and the prominence his spirit craved irked and grieved him, and he smarted and chafed under it. The behest 'absent thee from felicity awhile' was one to which his ambitious temper could not quietly accede. So in June, 1617, through Winwood, he reopened negotiations over his daughter and his ducats.

The Villiers answered through the candidate for dowries, Sir John, that 'Although he would have been well pleased to have taken her in her smock, he should be glad, by way of curiosity, to know how much could be assured by marriage settlement upon her and her issue.'

This time Coke came to Villiers' terms, and further agreed to redeem the 1300*l.* a year settled on Frances at the death of her parents by a present further settlement of 20,000*l.*, making 30,000*l.* in all to go with the very young lady. As a lawyer he seems in this affair to have been singularly oblivious of the principle of mutuality in agreements. However much a *quid pro quo* was implied, so far as can be ascertained the Villiers made no promises of good will or influence.

The new bubble of matrimonial felicity was soon pricked, and Lady Hatton failed to prove the very good wife of her husband's expectation. When she learned of the proposed disposition of her daughter she went to war again. Taking advantage of Sir Edward's habit of early to bed, about ten o'clock one evening she took Frances from their town residence at Hatton House, Holborn, to a waiting coach, and they fled through the night, following a circuitous route to throw off pursuit, first to the house of their cousin, Sir Edmond Withipole, at Oatlands, and from there to a house of Lord Argyle's near Hampton Court. For a time she succeeded in keeping secret the whereabouts of the girl. Then she conceived the idea of throwing the Villiers' match off by pretending an earlier betrothal. The young Earl of Oxford was at that time in Italy, too far away for an immediate denial to frustrate her plan; and, it was said, exhibiting to the girl a forged letter from him, she induced Frances to sign the following avowal of an engagement:

I vow before God, and take the Almighty to witness, that I, Frances Coke, younger daughter of Sir Edward Coke, late Lord Chief Justice of England, doe give myself absolutely to wife, to Henry Vere Viscount Balbrooke, Earl of Oxenford, to whom I plight my fayth, and inviolate vows, to keepe myselfe till death us do part; and if ever I break off the least of these, I pray God damme me body and soule in hell fyre in the world to come. And in this world, I humbly beseech God the earth may open and swallowe me up quicke to the terror of all fayth breakers that remayne alive. In witness thereof, I have written all this with my owne hand, and sealed it with my own seale (a hart crowned), which I will wear till you return to make it good that I have sent you; and for further assurances, I here underneath sett to my own name,

FRANCES COKE

In the presence of my deare mother Elizabeth Hatton, July 10, 1617.

The 'deare mother' did not use this instrument immediately, but kept it in reserve.

Lady Compton was determined that her son John should not be deprived of his advantageous settlement, and applied to the Lord Keeper on Coke's behalf for a warrant to take Frances away from her mother. This introduces Bacon to the

Coke-Villiers matter. Either the vision of Bacon was singularly afflicted with a blind spot throughout the affair; or he felt that the ultimate danger to his own welfare of an alliance between his old rival and the Favorite was so great as to justify some immediate risks on his own part; or he wrongly estimated the relative strength of the Favorite and himself with the King; or he was unaware of how strongly Buckingham and the King were set on the marriage. Perhaps something of all four of these things influenced his conduct. Since Buckingham and the King had left London, March 17, 1617, for a visit to Scotland, the first time James had returned to his Northern Kingdom after coming to the English throne, Bacon could not take soundings for his course. He declined to issue the warrant Lady Compton requested, and his refusal, of course, offended the lady, and she, of course, complained to her son George in Scotland, and he, of course, complained to the King.

Coke learned where Lady Hatton was keeping Frances, and thoroughly angry, on Saturday, January 12, 1617, provided himself with a search warrant from his friend Winwood. The sixty-five-year-old lawyer gathered a band of retainers. His strapping six-foot son Clement, 'Fighting Clem' Coke, a man approaching thirty, joined his father. Clem had been admitted to his father's house of Court, the Inner Temple, seven and a half years earlier, had within a year from his admission been put out of the Inn Commons for a misdemeanor, and had had his readmission delayed because he had failed to appear before the Benchers as ordered. The members of the party armed themselves with pistols, mounted their horses, and galloped away down the road to Hampton Court.

They were hot on the chase, their blood was up. The lawyer with thirty-nine years at the Bar, former Attorney-General, former Chief Justice of the Court of Common Pleas, former Chief Justice of the Court of King's Bench, had no time to hunt for bailiffs to serve warrants. The band broke down the gate to the Argyle grounds, and at the house, merely shouting out something about having a warrant, demanded admission. Since it was not promptly granted, they battered through several doors, tore Frances from her mother, and took the road back to London. Though Lady Hatton rallied the house-

hold to join her in pursuit, and had her coach driven so recklessly that it met with an accident, they could not overtake the fleeing horsemen, and Coke delivered Frances over to Lady Compton. Chamberlain wrote Carlton the story July 19, 1617:

These eight or ten days, we have great stirs twixt the Lord Coke and his lady, about convoying away the younger daughter, whom she will no ways consent should match with Sir John Villiers, as the Lord Coke had agreed, with 20,000*l.* ready portion, 2000 marks yearly maintenance during his life, and 2000*l.* land after his decease. If he had offered these conditions when time was, and taken occasion by the forehead when she presented herself, they might have stood him in great stead. Whereas now, perhaps he doth but catch at the bald side. The daughter was first carried to the Lady Withipole's, from thence privily to a house of the Lord Argyle's by Hampton Court, whence her father, with a warrant from Mr. Secretary, fetched her; but, indeed, went farther than his warrant, and brake open divers doors before he got her. His lady was at his heels, and if her coach had not mired in the pursuit after him, there was like to be strange tragedies. He delivered his daughter to the Lady Compton, Sir John's mother, but the next day, Edmondess, Clerk of the Council, was sent with a warrant to have the custody of her at his own house.

IV

LADY HATTON had not turned back after her coaching accident in her pursuit that Saturday, but kept right on to London; and, not having overtaken her triumphing husband bearing away his captured daughter, the wife, familiar with the idea of having the law on her lawyer spouse, remembered the man who, twenty years earlier, when she was a very young widow, besought on his behalf as a suitor for her hand the influences of that Earl of Essex whom the man she had married had later convicted of treason.

Let a correspondent of Coke's daughter, Ann Sadler, tell the story of Lady Hatton's coming to Bacon that day. After reciting the lady's overturn on the road, and the fact that she got Lord Holles to accompany her, the letter continues:

at last to my Lord Keeper's they came, but could not have instant access to him, for that his people told them he was laid at rest, being not well. Then my La. Hatton desired she might be in the next room where my Lord lay, that she might be the first that should speak with him after he was stirring. The doorkeeper ful-

filled her desire, and in the meantime, gave her a chair to rest herself in, and there he left her alone: but not long after, she rose up and bounced against my Lord Keeper's door, and waked him and afrighted him that he called his men to him; and they opening the door, she thrust in with them, and desired his L-p to pardon her boldness, but she was like a cow that had lost her calf, and so justified herself and pacified my Lord's anger, and got his warrant and my Lo. Treasurer's warrant, and others of the Council to fetch her daughter from the father and bring them both to the Council.

When Bacon learned Lady Hatton's errand, did he repeat to himself the quotation Chamberlain had written to Carlton, 'Perdere quos vult Jupiter prius dementat'? Earlier on that same day, July 12, 1617, he had dispatched to Buckingham in Scotland a letter calculated to drive a nail into the Huddler:

MY VERY GOOD LORD, — I shall write to your Lordship of a business which your Lordship may think not to concern myself; but I do think it concerneth your Lordship much more; for as for me, as my judgment is not so weak to think it can do me any hurt, so my love to you is so strong, as I would prefer the good of you and yours before mine own particular.

It seemeth Secretary Windwood hath officially busied himself to make a match between your brother and Sir Edward Coke's daughter, and as we hear, he doth it rather to make a faction than out of any great affection to your Lordship. It is true, he hath the consent of Sir Edward Coke (as we hear) upon reasonable conditions to your brother, and yet no better than without question may be found in some other matches. But the mother's consent is not yet had, nor the young gentlewoman's, who expecteth a great fortune from her mother, which without her consent is in danger. This match, out of my faith and freedom towards your Lordship, I hold very inconvenient, both for your brother and yourself.

First, he shall marry into a disgraced house, which in reason of state is never held good.

Next, he shall marry into a troubled house of man and wife, which in religion and Christian discretion is disliked.

Thirdly, your Lordship will go near to lose all such your friends as are adverse to Sir Edward Coke (myself only except, who out of pure love and thankfulness shall ever be firm to you).

And lastly, and chiefly (to leave it), it will greatly weaken and distract the King's service, for though in regard to the King's great wisdom and depth, I am persuaded those things will not follow which they imagine, yet opinion will do a great deal of harm, and cast the King back, and make him relapse into those inconveniences which are now well on to be recovered.

Therefore, my advice is, and your Lordship shall do yourself a great deal of honor if, according to religion and the law of God, your Lordship will signify unto my Lady your mother, that your desire is that the marriage be not pressed or proceeded in without the consent of both parents; and so, either break it altogether, or defer any further dealing in it, till your Lordship's return: And this the rather, for that (besides the inconvenience of the matter itself) it hath been carried so harshly and inconsiderately by Secretary Winwood as for doubt that the father should take away the maiden by force, the mother, to get the start, hath conveyed her away secretly; which is ill of all sides. Thus hoping your Lordship will not only accept well, but believe my faithful advice, who by my great experience in the world, must needs see further than your Lordship can, I ever rest,

Your Lordship's true and most devoted friend and servant,
FR. BACON, C.S.

But Lady Ann Sadler's correspondent is not quite clear with respect to one result of Lady Hatton's impatient bouncing against the Lord Keeper's door. Bacon did not furnish her with a warrant on the spot, but referred her to the Council which was meeting the next day, although a Sunday, and the lady without delay, prepared a 'Passionate and tragical' petition, which was presented; and she impatiently followed up the presentation with another of her personal appearances at the Council Board at that same meeting. Here the minutes of the meeting taken to inform James in Scotland of his English affairs tell the story in full:

There was a petition delivered unto us upon Sunday the 13th of this instant by the Lady Hatton, complaining in somewhat a passionate and tragical a manner, that while by his Majesty's grace she was settling and securing her poor fortunes, she was by violence dispossessed of her child; and informing us that in regard to her daughter's weak constitution, she had sent her to Sir Edmond Withipole's house for a small time, and that it was not done in any secret manner, whereupon Sir Edward Coke, never asking or taking account what was become of her, but pretending warrant as he said from the Board, had the day before, with his son and ten or eleven servants weaponed in violent manner, repaired to the house where their daughter was remaining, and with a piece of timber or form broke open the door, and dragged her along to his coach with many other circumstances too long to trouble his Majesty withal.

Whereupon, in regard the complaint contained matter of riot and disturbance, such as hath not happened since his Majesty's

departure into Scotland, we appointed the Tuesday following for the hearing of Sir Edward Coke upon the same complaint.

The matter being thus ordered, we fell to other business, and while we were in despatch thereof, the Lady Hatton came to the Council Chamber door, and desired to have access to the Board, which, being admitted, she was told that order was taken concerning her petition; but she, making further insistence, desired her daughter might be forthwith sent for in regard she was grown to that weakness by occasion of the violence and fright she had taken as was with speed to be looked unto for the safety of her life; and that therefore she might be brought to London that night, and remain some place where she might have help by physic and attendance as were requisite for her preservation and recovery. Which being thought reasonable in humanity, and for avoiding other inconveniences, a letter was written from the Board to Sir Edward Coke, acquainting him with his Lady's complaint and desire, and requiring him to deliver his daughter to Mr. Edmondess, Clerk of the Council, to be brought by him to London, and kept in his house until the hearing of the cause.

When the Council's messenger came that very night to Coke, Sir Edward said that it was late in the evening, that his daughter was not in any extremity, and that, on his peril, he would deliver her at Mr. Edmondess's house the next morning. Apparently the Council sat late, for the messenger was able to report back, and the Board, to insure obedience to its order, issued to Lady Hatton a warrant with writ of assistance to have Frances brought to Mr. Edmondess's house.

The next morning, Monday, July 14, 1617, Lady Hatton, armed with her warrant, gathered a small army about her, 'the Lord Haughton, Sir Edward Sackville, Sir Robt. Rich, and others, with three score men and pistols,' and set out to overpower the enemy. Coke had no intention of disobeying the Council, but evidently feared that the mother planned a reabduction of the daughter back to the maternal keeping; for, putting Frances in a coach with Lady Compton, he and 'Fighting Clem' and their forces ahorse surrounded the vehicle to convoy it, and swore they would die before they would part with the girl.

The affair turned out on both sides to be a case of 'The King of France and forty thousand men marched up a hill and then marched down again,' for the hostile armies had taken different roads and did not clash.

The next day, Tuesday, July 15, 1617, Coke had to answer the Council for his breach of the peace in battering down doors of private houses the Saturday before. He tried to justify on an inherent right of a father to take a daughter who was being withheld from him; but as the new Attorney-General Yelverton disagreed with him, and the authority of Coke was not then speaking from the King's Bench, the Council instructed the Attorney-General to lay information of the breach of the peace before the Court of the Star Chamber, and to prevent further breaches, decided that Frances should be kept on neutral ground. Sir Edward and the mother agreed on the house of Lord Knyvet, near Staines, and the Council enjoining Coke and Lady Hatton from all violence, gave the custody of the girl to Attorney-General Yelverton, until the consent of Lord Knyvet to keep her should be obtained.

V

IN view of the various ways in which the Crown had harassed Coke in order to complete his disgrace, a majority of the Council felt that the more annoyance they could cause him, the better they would please the King; and were happy in the feeling that at the same time they were really acting in accordance with their duty. So when the Board met a few days later, it began to heckle Winwood for giving Coke a warrant. Indeed, one wonders a little about this warrant, whether the Secretary had authority to issue it, and whether, relying on Coke's prestige in the law, he had not done something which Coke himself was so doubtful about that he did not care to take advantage of it. But Winwood, who had reopened the negotiations for the marriage, and was on the inside of the affair with the Court, gave his goading fellow Councillors a jolt, by producing a letter from the King approving his conduct throughout.

Those in the Council who had been endeavoring to make trouble for Coke out of his armed foray saw that they were treading the wrong path and began to retrace their steps. They dropped the threat of Star Chamber proceedings for his riot. Yelverton persuaded Lady Hatton to dwell with her husband under the roof of Hatton House and delivered Frances to them there, with an order from the Council that Lady

Compton and John Villiers should be allowed to visit her as much as they wished. A letter from Chamberlain to Carlton July 17, 1617, tells the gossip:

The next day, being all convented before the Council, she was sequestered to Mr. Attorney, and yesterday, upon a palliated agreement twixt Sir Edward Coke and his Lady, she was sent to Hatton House, with order that the Lady Compton and her son should have access to win her and wear her. It were a long story to tell all the passages of this business, which hath furnished Paul's and this town very plentifully the whole week. The Lord Coke was in great danger to be committed for disobeying the Council's order, for abusing his warrant, and for the violence used in breaking open the doors; to which he gave reasonable answers, and, for the violence, will justify it by law, though orders be given to prefer a bill against him in the Star Chamber. He and his friends complained of hard measure from some of the greatest of that Board, and that he was too much trampled upon with all language. And our friend [Winwood] past not scot-free for the warrant, which the greatest [lawy?]er there said was subject to a præmunire, and, withal, told the Lady Compton that they wished well to her and her sons, and would be ready to serve the Earl of Buckingham with all true affection, whereas others did it out of faction and ambition. Which words, glancing directly at our good friend [Winwood], he was driven to make his apology, and to show how it was put upon him, from time to time by the Queen and the other parties; and, for conclusion, showed a letter of approbation of all his courses from the King, making the whole table judge what faction or ambition appeared in this carriage, ad quod non fuit responsum. And, indeed, hitherto I do not see in all these oppositions but that he maintained his ground and goes away with general applause. But hinc illæ lachrymæ that they doubt the Lord Coke's rises by this match, and his coming again among them, and therefore, would either hinder it, or have the thank to contrive it. But if it be as is said, both mother and daughter are far enough from it, and have another aim at a younger son of the lord treasurer's.

Apparently the mother's influence with her daughter was too strong for the purpose of the father and the Villiers; for on more approving messages from the King to Winwood, the much-tossed-about girl was sent to the house of her half-brother, Sir Robert Coke, at Kingston, and the mother permitted to see her, but not to live in the same house with her. Then Lady Hatton took lodgings near by and attempted to freeze out her enemy by spending so much time with Frances

that Lady Compton and her friends had little opportunity to see the girl, until finally official pressure was brought to bear to keep the mother away. Something in a letter from Buckingham himself to Lady Hatton moderated her hostile attitude for the time being. Chamberlain wrote it all to Carlton August 9, 1617:

Soon after my last to you, there came new letters out of Scotland to approve all his [Winwood's] dealings in the Lord Coke business, which made the most forward on the other side to pull in their horns; and order was taken that his daughter should be delivered to him, and disposed of as he should think fit. Whereupon he sent her to Kingston, to his son Sir Robert Coke's, where she yet remains; and her mother, having permission to resort unto her, but not to lie in the house, she hired a lodging in the town, and kept her such company all day that nobody else could have access. Whereupon her coming is much moderated, and divers of her instruments in conveying her away are called in question and examined. Whereupon, finding herself forsaken of her friends, who dare not show themselves too far in the business, and seeing she struggles in vain, she begins to come about, and upon a letter to her from my Lord of Buckingham, hath returned answer as I hear, that if this course had been taken with her at first, things might have proceeded better, and upon some conditions, can be content to double the portion her husband hath offered, and so make up the match, and give it her blessing. The Lady Compton and her son have been at Kingston, these two or three days, which makes the world think they grow to conclusion. But, it seems, the Lady Hatton would have all the honour and thanks, and so defeat her husband's purposes; towards whom, of late, she hath carried herself very strangely, and, indeed, neither like a wife nor like a wise woman.

By this time Bacon knew that he was deeply in trouble over the affair. After dispatching to Buckingham his letter of July 12, 1617, before Lady Hatton had bounced against his door that day, he heard nothing from either the Earl or the King. Winwood's disclosure to the Council of the King's attitude made Bacon realize that he had better look out. Since he had committed himself to disapproval, he had to straddle, and did so in letters to James and Buckingham, written July 25, 1617, in which he maintained that his attitude had been taken in real friendship to the Favorite and intended in real service to the King.

James answered chidingly and at length, imputing the

blame for Coke's breach of the peace on Lady Hatton's provocation in stealing away their daughter; and Buckingham answered with a brief and cold rebuke. In his letter to the King, Bacon had prepared his line of retreat in saying that if, after receiving his arguments against the match, the King still desired it, without doubt the King's wisdom was the greater, and his Chancellor would, as always, loyally obey, and believed he 'could prevail more with the mother than any other man.' Accordingly, Bacon told both Lady Hatton and Lady Compton that he was in favor of the match; and August 23, 1617, wrote Buckingham that he had done so. A further letter from James scolded his Chancellor, and especially found fault with him for not having supplied Lady Compton with a warrant for Coke's use when she had requested it.

The King, by this time on his way back from Scotland, had arrived at Coventry. Coke went down to see him, and Bacon sent Yelverton down to spy out the land; and his report to Bacon, dated September 3, 1617, showed how the land lay:

Yelverton found that 'Sir Edward Coke hath not forborne by any engine to heave at your Honor and at myself; and he works by the weightiest instrument, the Earl of Buckingham, who, as I see, sets him as close to him as his shirt, the Earl speaking in Sir Edward's phrase, and as it were, menacing in his spirit.' And further:

My Lord, Sir Edward Coke, as if he were already upon his wings, triumphs exceedingly; hath much private conference with his Majesty; and in public doth offer himself and thrust upon the King with great boldness of speech as heretofore. It is thought, and much feared, that at Woodstock [the next halting-place in the royal progress homeward] he will again be recalled to the Council table; for neither are the Earl's eyes or his thoughts ever off him. Sir Edward Coke, with much audacity affirmeth his daughter to be most deeply in love with Sir John Villiers, that the contract pretended with the Earl [of Oxford] is counterfeit, and the letter also that is pretended to come from the Earl.

Yelverton said, too, that he found Buckingham openly hostile to Bacon and that those about the Earl were reminding him that they had warned him against this man now elevated to the Chancellorship, who had a way of turning against those who helped him, as in the cases of the Earls of Essex and of Somerset. 'That it is too common in every man's mouth in

court, that your greatness shall be abated, and as your tongue has been a razor to some, so shall theirs be to you.' Yelverton advised Bacon, 'That you seem not dismayed, but open yourself bravely and confidently, wherein you can excell all subjects; by which means I know you shall amaze some and daunt others,' and that Bacon place the burden of responsibility on the Council which had acted as a body of which Bacon was only one member, and put the blame for all the commotion on Coke's violence of carriage.

So much for the glimpse which a man whose name is well known in the history of our law gives of his two more famous contemporaries, showing the pushing ways of Coke and the easily self-confident manner of Bacon.

Though it is not clear just when Lady Hatton disclosed the pretended marriage contract with the Earl of Oxford, Yelverton's letter shows that she had used it.

As the royal party approached London, more correspondence passed between Bacon and Buckingham, who, relenting now that Bacon was working for the match, among other things wrote, implying the Chancellor's deep obligation to him:

I was forced upon my knees to beg of his Majesty that he would put no public act of disgrace upon you. And I dare say, no other person would have been patiently heard in this suit by his Majesty but myself, so did I (though not without difficulty) obtain this much.

Whereupon Bacon with a sense of great relief reflected in the tone of his letter, answered:

MY EVER BEST LORD, NOW BETTER THAN YOURSELF,—your Lordship's pen, or rather pencil, hath portrayed towards me such magnanimity and nobleness and true kindness, as me thinketh I see the image of some ancient virtue and not anything of these times. It is the line of my life, and not the lines of my letter that much express my thankfulness: wherein, if I fail, then God fail me and make me miserable, as I think myself at this time happy by this reviver through his Majesty's singular incomparable love and favor. God preserve you, prosper you, and reward you, for your kindness to

Your raised and infinitely obliged friend and servant,

FR. BACON, C.S.

Sept. 22, 1617

VI

IN following through Bacon's extrication from his entanglement in the Coke-Villiers business, the narration has run ahead of the principals in the affair. When, as Yelverton reported, Coke, on his visit to the King at Coventry, denounced as a fabrication the story Lady Hatton circulated of a prior marriage agreement and as a forgery the papers she had for evidence, she was removed from her Kingston lodging and the limited communication with her daughter which had been allowed to her, and was placed in custody in London in charge of Sir William Craven, a former Lord Mayor of the City.

The situation drove her into a near hysterical illness. Though one would like to think that a motherly affection felt the match with this man already known to be physically undermined was not calculated to make her daughter happy, it is fairly clear that her great desire was to thwart her husband and in some way come out victorious in their clash of wills. When at Kingston she had received a communication from Buckingham making some overture by means of which it might seem that, through her assenting to the marriage and contributing as much to the dowry as her husband, she might make the alliance seem in effect more her own accomplishment than that of her husband, she was as ready to sacrifice her daughter to her spite as her husband was to sacrifice the girl to his ambition.

With Lady Hatton in custody and out of the way, preparations for the wedding went swiftly forward. Coke's assertion that the prior contract was only pretended was accepted, and it was not deemed necessary to wait until young Lord Oxford should be heard from. Frances, expressing her compliance in the marriage to John Villiers, wrote a letter to her mother, in which it is as easy to see the father supplying the language for the fourteen-year-old girl's hand to pen, even to what he no doubt thought was the subtle naïveté of having the most important part put in a postscript, as it is to see the impetuous mother supplying the vehement 'I pray God damme me body and soule in hell fyre in the world to come' of Frances's written declaration of the prior contract. So instructed, Frances penned this letter:

MADAM,

I must now humbly desire your patience in giving me leave to declare myself to you, which is, that without your allowance and liking, all the world shall never make me entangle or tie myself. But now, by my father's especial commandment, I obey him in presenting to you my humble duty in a tedious letter which is to know your Ladyship's pleasure, not as a thing I desire, but I resolved to be wholly ruled by my father and yourself, knowing your judgment to be such that I may rely upon it, and hoping that conscience and the natural affection parents bear their children, will let you do nothing but for my good, and that you may receive comfort, I being a mere child, and not understanding the world nor what is good for myself. That which makes me a little give way to it is that I hope it will be a means to procure a reconciliation between my father and your ladyship. Also, I think it will be a means of the King's favor to my father. Himself [Sir John Villiers] is not to be misliked, his fortune is very good, a gentleman well born.... So I humbly take my leave, praying that all things may be to every one's contentment,

Your Ladyship's most obedient and humble daughter,
forever,

FRANCES COKE

Deare Mother, — Believe there has no violent means been used to me by words or deeds.

This wedding, under royal auspices, of Frances Coke and Sir John Villiers, which took place September 27, 1617, did not bring out the magnificence in gifts of the wedding of that other Frances, born Howard, and by her first marriage Countess of Essex, who had fought and poisoned her way to her brief felicity, for now it was not a King's Favorite himself who was being married, but only a Favorite's brother, and not a daughter of a Lord High Treasurer still in office, but a daughter of a deposed Lord Chief Justice.

Still, it was a wedding of some pomp. Sir Edward brought his daughter from his son's house in Kingston to London in a triumphal procession of coaches, and the King himself gave away the juvenile bride. For all the daughter's letter, not expected really to gain her consent, by which the father had created a 'record,' the mother had not consented, and would not imply a consent by appearing at the wedding. So she remained sequestered in the custody of Sir William Craven. Adam Newton (in error as to the mother's consent) wrote the

next day, September 28, 1617, of the event to Sir Thomas Puckering:

Yesterday, which was Michaelmas-day, the marriage betwixt Sir John Villiers and the Lady was celebrated in the presence of their majesties; of the particulars I cannot inform you, because I came from thence on Sunday in the afternoon, when I met near unto Kingston Bridge the parties to be married going towards the Court: Sir Edward Coke bringing them from his son's house at Kingston, Towns End, with eight or nine coaches. It is said the mother's consent was obtained; the lady protesting that howsoever she liked Sir John better than any other whatsoever, yet she desired to keep a solemn promise made to her mother not to marry any man without her consent.

Yelverton's conjecture that the King might even before his return to London restore Coke to the Council table was not fulfilled. James and Buckingham waited until the former Chief Justice had made a complete delivery of daughter and ducats, and on the next day after the wedding, the suspension of Coke from the Board was removed, September 28, 1617, and once more he took his place among the King's official Councillors.

VII

ALTHOUGH Buckingham and his mother, Lady Compton, had put through the marriage of Frances Coke without her mother's consent, they had no intention of letting Lady Hatton's fortune fail to contribute to the setting up in the world of the needy brother and son, Sir John. The Favorite had withdrawn from his tentative approach to Lady Hatton when she was lodging at Kingston only to concentrate on a speedy assurance of the marriage and Coke's money. At last the Earl of Oxford was heard from with a denial of any engagement to Frances. The Villiers with their influence over the King let the Lady Hatton stay in custody and had her harassed with threats of legal proceedings against her for her conduct in the marriage matter. Chamberlain, sending all the news to Carlton, wrote October 11, 1617:

I cannot relate all the passages of the Lady Coke's business, because I was absent. But sure she hath done herself a great deal of wrong in kicking against the pricks, and by indiscreet courses, to hinder that which lay not in her power. Her daughter was mar-

ried to Sir John Villiers at Hampton Court, on Michaelmas-day. The King himself gave the bride, and they were thrice publicly asked in the church. The pretended contract with the Earl of Oxford proves nothing; and since the marriage letters are come, whereby he disavows it. Yet, to say my conscience, methinks there needed no such haste, but that they might have tarried for his answer, specially the bridegroom, being in no such perfect state of health, but that wedlock was rather to hurt than heal him. But her mother's wilfulness and animosity, together with the danger of her continual plottings, made the business go on the faster. She lies still at Sir William Craven's crazy in body, and sick in mind. There is a commission to the lord keeper, the lord archbishop, Secretary Winwood, and I know not who else, to examine her of conspiracy, disobedience, and many other misdemeanors, and to proceed against her according as they find cause. But her sickness stands her in some stead for the time, and, if she come again to herself, it may be in that space there will grow grace. But she is in a wrong way now, and so animated toward her husband, that it is verily thought she would not care to ruin herself to overthrow him. He is admitted again to the council-table, but his friends cannot yet foresee any further advancement. She went lately to the Marquis Hamilton, and communicated unto him all her grievances recommending herself and her distressed estate to his protection.

Coke's staunch friend and fellow Councillor, the Secretary of State, Sir Ralph Winwood, died October 27, 1617, just one month after the wedding he had done so much to bring about.

Having subjected Lady Hatton to pressure, Buckingham suddenly released her from it. Chamberlain and his correspondent Carlton were especially interested in keeping in touch with Lady Hatton at this time, for they were hopeful of getting her to use her influence in favor of the appointment of Carlton to the Secretaryship vacant on the death of Winwood. Chamberlain wrote Carlton October 31, 1617, four days after Winwood's death:

But I must not forget, that you are not the last, nor the least spoken of; but I doubt your absence is your greatest hindrance, unless the Lady Hatton have the grace in this conjecture to have you in remembrance. For, if it be as I hear, it never was in her power to stand you in so much stead. For the king coming to town yesterday, it was told me, that the Earl of Buckingham meant to go himself and fetch her, as it were, in pomp, from Sir William Craven's, where she hath been so long committed, and bring her to the king, who, upon a letter of her submission, is gra-

ciously affected towards her. But another cause is that, seeing her yielding, and, as it were, won to give her allowance to the late marriage, he will give her all the contentment and countenance he can, in hope of the great portion she may bestow upon her. For there is little or nothing more to be looked for from Sir Edward Coke, who hath redeemed the land he had allotted his daughter, for 20,000*l.*; so that they have already 30,000*l.* of him paid down. I would I knew any means to insinuate this business to her. If your father Saville or his lady were in town, they might easily do it; and I am persuaded that, considering all circumstances, it were no hard matter for her to obtain it upon this reconciliation and new league of alliance; and it might concern herself very much, considering that she lays all the fault of her late troubles upon the late secretary, who, not long ago telling her, before her father, that for all her bitter speeches, they two should become good friends, again she protested she would sooner be friends with the devil.

On the very next day, November 1, 1617, after Chamberlain wrote his rumor that Buckingham would show a change in Court attitude toward Lady Hatton in a spectacular way, the rumor proved true, and the correspondent wrote the fact to Carlton, again referring to Carlton's hope of the Secretaryship through the influence of Lady Hatton:

Your brother Harrison is in town, likewise, and upon Wednesday came Sir Henry Saville. They do all apprehend how much the Lady Hatton might prevail, if she would set her whole mind and strength to it. And I think they have, and will find means, to put her in remembrance. But the voice goes, that the place is not likely to be disposed of in haste; for the king sayd, he was never so well served as when he was his own secretary, and to that end hath delivered the seals that were belonging to Sir Ralph Winwood, to the custody of the Earl of Buckingham, and there perhaps they shall remain till they both grow weary of the trouble. In the meantime, Sir Thomas Lake hath gotten possession of the lodging at court, and of the diet; and it was said awhile, that he had the seals, and a warrant for allowance of the 1400*l.* yearly for intelligence but it falls not out so.

The first of this month, being so solemn a day, and the streets [crowded] by reason of the Lord Mayor's passage to Paul's, the earl, accompanied by the Marquis Hamilton, the Lord Compton, the Lord Hay, Sir Edward Cecil, and I know not how many more, to the number of twelve coaches went to fetch the Lady Hatton from Sir William Craven's, and brought her to her father's, at Cecil House, in the Strand, where she hath continued ever since, saving that on Tuesday she went with little state to the court, and

there was much greeted by the king, who likewise reconciled her to the queen, and made, at the same time, an atonement 'twixt her and the lady Compton, and a perfect peace 'twixt her and her daughter, who would not be persuaded that she would forgive and forget, till, at parting, she got the king to make her swear that she loved her as dearly as ever she did in her life. That night there was a great feast at her father's, where the Earl of Buckingham, and most of the lords about court, were entertained. The king was to have supped last night with her at Hatton House, but I hear it is put off till this day at dinner; and so, from thence he goes to Theobalds, at night. It is hoped he will likewise mediate a peace 'twixt her and Sir Edward Coke, which was mentioned and motioned at the general pacification. But the king said, that was a matter of more difficulty and more time, and, when all were done, I doubt that would prove but a palliated cure, the wound being so deep, that *manet alta mente repostum*, so that he is, as it were, in *statu quo prius*, saving that he comes to the Star Chamber, and to the council table. And thus you see the revolution of these times.

So it appears that Coke, readmitted to the Council table, was making no progress on the way to further honors. Meanwhile under the plan of the Villiers the Lady Hatton was to be cajoled and flattered. She gave her postponed feast to the King, and Chamberlain wrote all about it to Carlton, who was still hoping for the Secretaryship, November 15, 1617:

Your father, Saville, is gone to Kent to his daughter Sedley. The day before his going I met him, and wished him to apply to the Lady Hatton, whom he had already visited, but moved her in nothing, because the time was not fit, but he meant to do it before he went. Some whisper that she is already engaged, and means to employ her full force, strength, and virtue for the Lord Haughton or Holles, who is become her prime privy councillor, and doth by all means interest and combine her with the Lady of Suffolk and that house, a man whom Sir Edward Coke can no ways endure, and from whose company he would fain, but cannot, debar her. The world speaks of large offers made in his behalf, but others say, that he which is already in place makes as large to keep him and all others out. Neither is it now so much worth the following, seeing he hath gotten very lately the £1400 a-year allowed for intelligence....

The Lady Hatton's feast was very magnificent, and the king graced her every way, and made four of her creatures knights: Sir Peter Chapman, that belongs to the Lord of Exeter; Sir Francis Needham, an old solicitor 'twixt her and Sir Christopher Hatton; Sir Nathaniel Rich, a kinsman of Sir Roberts; and one Withipole, a kinsman of her own. But the principal graces and favours

lighted on Lady Compton and her children, whom the king praised and kissed, and blessed all those that wished them well.

This week, on Wednesday, she [Lady Compton] made a great feast to the Lady Hatton, and much court there is between them; but, for aught I can hear, the Lady Hatton holds her hands, and gives not her milk so freely as was expected, which in time may turn the wind about again. There were some errors at the Lady Hatton's feast (if it were not on purpose), that the lord chamberlain and the Lord of Arundel were not invited, but went away to their own dinner, and came back to wait on the king and the prince. But the greatest error was, that the good man of the house was neither invited nor spoken of, but dined that day at the Temple.

Coke dined at the Temple, not only on that day of the feast his wife gave to the King, but made his Chambers there his residence during this period. The flattering attention the Court was showing to Lady Hatton was not a mere straw to indicate the way the wind blew, but a weather vane aloft for all the world to behold; and the beholders left the former Chief Justice, now so obviously of no particular importance, rather lonely. And after having parted with so much money for the marriage he had the reaction of feeling rather poor and was economizing. As Sir Nathaniel Brent wrote of him to Dudley Carlton, November 14, 1617, the day before Chamberlain's letter just given:

His ordinary residence is at the Temple, where very few come unto him, and he sendeth for his diet to Goodman Gibbes, a slovenly cook, in Ram Alley. I believe not that which some confidently report, that he sendeth his shoes to be cobbled, and that on fasting night, when he meant not to feast his men, he sent to his neighbor Gibbes for a breast of mutton.

Goodman Gibbes's cook shop in the Ram Alley purlieu of the Temple had a reputation for slovenliness. Massinger wrote in his 'A Way to Pay Old Debts' (Act II, Scene 2):

— This term-driver, Marrall,
This snip of an attorney —
The Knave thinks still he's at the cook's shop in Ram Alley,
Where the clerks divide, and the elder is to choose;
And feeds so slovenly!

And there at the Temple the narrative will leave Sir Edward Coke for a while to follow the fortunes of his wife and his daughter. In his retirement to his Chambers in the Temple,

Coke gained the possibility of occasional club companionship with his dear new son-in-law, Sir John Villiers, who, doing all the proper things, gained admittance to the Inner Temple, February 25, 1618.

Lady Hatton, as Chamberlain wrote, gave not her milk so freely as was expected. She owned land on the peninsula of Purbeck, which juts out of the south of England westerly of the Isle of Wight; land that had been property of Elizabeth's Chancellor and in some way became the property of the mother of Frances Coke. The Villiers wanted this land as a fitting background for honors for Sir John, and hoped to get them and further substance from the mother-in-law. She, however, though hugely enjoying the working out of her spite on her husband, and her living with the light of the social blaze of the Court turned on her, was reluctant, as the woman often is, to pay. She had as keen a sense as her husband of the desirability of getting and keeping wealth, and an even greater unwillingness to let it go for the purchase of the things she wanted. And in this matter she had a better business sense than her husband in realizing that the hope of her money was purchasing for her that which she might not get when she had paid.

She kept her bait dangling for over a year, and delayed the elevation of the waiting Sir John to a higher rank than his plain knighthood until brother George and Lady Compton almost had him elevated under the maternal name of Beaumont. But Lady Hatton finally did give down and transferred Purbeck; so, in June, 1619, Sir John Villiers was raised through the grade of Baron Villiers to Viscount Purbeck. Lady Hatton did not, however, add further to the fund to support the honors. Though the Villiers tried every twist, they could wring no more from her. They offered her the title of Countess of Westmoreland, which she would have liked, but was unwilling to pay the price asked for it. They next tried the old turn of her spite against her husband, and threatened to create Coke a baron, but she was prepared to suffer this rather than pay; even, since the elevation of her husband, though she kept separated from him, would reflect some luster on herself, perhaps she did not object to it. She enjoyed the run of Court society, and, with her daughter and son-in-law at her side, gave a series of splendid entertainments.

VIII

THOUGH the marriage of his daughter Frances left Coke gnawing his heart at his lodging in the Temple, yet the removal of his sequestration from the Council gave him an opportunity to mingle in public affairs and still to hope for preferment. Queen Anne appointed him her Justice in Eyre of all her forests, and on the death at this time of Sir John Deckham, Chancellor of the Court of the Duchy of Lancaster at Westminster, a part of the Exchequer administering Crown lands and exercising in equity form certain judicial functions, Coke sought appointment to the vacancy. The correspondent Chamberlain names him among several who hoped to have the office 'gratis' in contrast to others who sought it 'by the plain way of purchase.' This post, however, was not bestowed on Coke, who, other than the Queen's favor, obtained his first recognition after his readmission to the Council in a different way.

Thomas Howard, Lord Suffolk, whom James made Lord Treasurer in 1614, and his grasping Spanish-pension-taking wife have already appeared in the story of their daughter Frances who became Lady Somerset. The times, permitting as allowable so much of private advantage from office that it was easy to slip across the line of what the law condemned as bribery, made dangerous such a position as the Treasurership for such a man as the easy-going Suffolk married to such a wife as his Countess. When those opposed to the Howards told the King that no one was able to get any payment from the Treasury until he had given a bribe to the Treasurer's wife, James sent Lake to order Suffolk to send the lady out of town. Though she went and stayed awhile, absence from London was not to her liking; and her return stirred James to an angry exclamation that if she were not sent back he would have her carted out of town like the vilest of her sex.

Information to the Government implicated in improprieties the Treasurer, Lady Suffolk, and an Exchequer official, Sir John Bingley. James promptly, July 19, 1618, called for Suffolk's resignation, named a commission to take charge of the Treasury and investigate its affairs, and showed Coke, of whom, at the time Suffolk had been given the position, there had been gossip in connection with the vacancy, the favor of

an appointment as one of the Commissioners. So Coke found himself serving with Bacon, with George Abbot, Archbishop of Canterbury, with Sir Robert Naunton, successor to Winwood as Secretary, with the steady Sir Fulke Greville, Chancellor of the Exchequer, and with the devotional scholarly Launcelot Andrewes, then Bishop of Ely, who had read for Bacon the manuscript of 'The Advancement of Learning' and of 'Cogitata et Visa.'

Though the Treasury, as usual under James, was in a bad way and facing an estimated deficit for the year of 100,000*l.*, yet, thanks to the increase in revenues from the duties of a growing country and their collection under the shrewd Sir Lionel Cranfield, Surveyor-General of the Customs, on his way up in life from his London apprentice boyhood, and to Cranfield's economies in household expenditures of the Crown, the anticipated deficit was less by 50,000*l.*, than the actual deficit of the year before. Coke, zealous to regain a more prominent position, threw himself into his familiar task, with his ready assumption of guilt, and began investigating the charges of peculation against Suffolk.

While Coke was in the midst of this labor, he received further evidence of the King's readiness to make use of his services in his appointment, August 17, 1618, on the commission to examine the charges against Raleigh, who a week earlier had been recommitted to the Tower on his return from his ill-fated Orinoco expedition. But that story will be told a little later.

At last James consented to proceedings against Suffolk in the Court of the Star Chamber, where Coke as a Privy Counsellor of course still sat, and there he displayed his old-time ferocity in voting for a fine of 100,000*l.*, against the disgraced Treasurer. The other members of the Court were more merciful and fixed the fine at 30,000*l.* The best counsel could say for the Countess was to make the delightful distinction that she had taken her bribes, not in her capacity as the wife of the Lord Treasurer, but in her capacity as the wife of the Earl of Suffolk, a distinction which did not convince the Court of her innocence, and she and the Earl were sentenced to imprisonment in the Tower from which the King released them after ten days.

It was a hard time for Howards in spite of James's general

friendliness in memory of the part they had taken in easing his way to the English throne. While the investigation of Thomas as Lord Treasurer was under way, another commission, with Cranfield, foe to incompetence, as a member, was carrying on an examination of the Admiralty, which disclosed a shocking condition, as a result of which Charles Howard, Earl of Nottingham, resigned, and Buckingham on January 28, 1619, became Lord High Admiral.

Still a Privy Councillor, sitting and active in the work of the Court of the Star Chamber, and a Commissioner of the Treasury, Coke was given more evidence that the royal countenance was not entirely withdrawn. James's Queen, the masque and banquet-loving Anne of Denmark, who had maintained substantially a Court separate from that of the King, died March 2, 1619. Coke was appointed to inventory her jewels and the contents of her four cartloads of trunks and cabinets, which were sent down to Greenwich to the King, who, as Chamberlain wrote to Carlton May 14, 1619, 'perused them all and bestowed some reasonable portion on the Earl of Buckingham.'

IX

WHILE Coke was in the midst of his labor on the Treasury Commission, he again came in contact with Raleigh in such a way that it is necessary to relate briefly the story of Sir Walter from the date of the reprieve from his sentence of death. He had been kept in the Tower, where after a time his wife and son Walter were permitted to have an apartment with him. Presently he sent his son to travel on the Continent with Ben Jonson. As one of the episodes of this education, the boy, in a town in France, finding Rare Ben in a drunken sleep, procured a horse and cart, stripped his tutor, and hauled him naked through the streets.

About a year before the death of Elizabeth, Raleigh had assigned his manor of Sherborne to trustees for the benefit of this son, reserving the income for life. On his attaint his own life interest fell to the King, who, however, gave a sixty-year term of this and ten other of Sir Walter's properties to trustees for Lady Raleigh and the son. At the time of Carr's appearance at Court, a flaw was discovered in Raleigh's conveyance of Sherborne for his son, and the judges declared it for-

feit with the rest of his estates. As Chamberlain wrote to Carlton:

And though the Lady Raleigh have been an importunate suitor, all these holidays in her husband's behalf, yet it is past recall, so that he may say with Job: 'Naked came I into the world, and naked will I go out.' But above all, one thing is to be noticed, that the error or oversight is said to be so gross, that men do merely ascribe it to God's own hand, that blinded him and his counsel.

James made his answer to her importunity to waive his claim that he 'maun have it for Carr,' but in lieu he promised what appears to have been probably a fair price.

At the Tower Raleigh was furnished with books and various articles for experimenting in chemistry and physics. He wrote his 'History of the World' partly for the education of his warm friend and admirer, the young Prince Henry, wrote various treatises on politics and science, and experimented in chemistry and physics. In some of his trading and exploring voyages he had acquired information from which, and from common knowledge of the great quantities of precious metal the Spaniards had gained from the Western Hemisphere, he believed, and inspired others with the belief, that in America mines of wealth sufficient to enrich the entire English nation awaited any one who had courage enough to find and work them.

He applied, in 1607, to Robert Cecil, Earl of Salisbury, for leave to go on an expedition to the Orinoco to discover a gold mine of which he claimed to have knowledge. Cecil refused permission. In 1610, Raleigh applied to Lord Haddington, and in 1611, directly to the Council. Early in 1616, he made another application, this time to Winwood, Secretary of State, and Winwood gave it favorable consideration. Though the Spanish Ambassador, Gondomar, did what he could in opposition, the King, probably for the hope the proposal offered of replenishing his depleted exchequer, finally agreed to it, on the condition that Raleigh give him a precise statement of the men, ships, and arms he was taking and the country and river he was to enter. Before Raleigh sailed from the Thames, news of the expedition with complete information of its strength and equipment had been sent to the Orinoco.

Raleigh left the Tower, March 19, 1616, to make preparation for his voyage, and on August 26, 1616, his commission was

signed. It described the enterprise as a voyage 'into the south parts of America, or elsewhere within America, possessed and inhabited by heathen and savage people; to the end to discover and find out some commodities and merchandise in those countries that be necessary and profitable for the subjects of these our kingdoms and domains, whereof the inhabitants make little or no use or estimation; whereupon also may ensue by trade and commerce, some propagation of the Christian faith and reformed religion amongst those savage and idolatrous people.'

Although the commission did not define the objects of the voyage more particularly, the King and other interested persons well understood that the real purpose was to find and work a particular gold mine, of the existence of which, near the banks of the Orinoco River, Raleigh said he had certain and definite knowledge. The document gave Raleigh all powers necessary for a commander, and provided that he and his fellow adventurers should have full property in all they might bring home, with a reservation to the Crown of one-fifth part. In urging his application, Raleigh stated that if he attempted to depart from the powers given him, he would be willing to have the other officers of the expedition authorized to throw him into the sea. He said further that if he did not bring them to a mountain covered with gold and silver ore, he would be ready on his return to pay the penalty with his head.

Before he left Raleigh had a long talk with Bacon at Gray's Inn, and asked the Lord Chancellor whether there should not be a provision in his commission for a pardon. Bacon answered that since Raleigh had power of life and death over his entire crew, by implication a pardon had been granted to him, and no express words to that effect were necessary.

On March 29, 1617, Raleigh sailed from Dover for Plymouth; on June 12, he left Plymouth for America; and after a tedious voyage on which he lost one fifth of his crew from sickness and several of his officers, and he himself nearly died, on the 14th day of November the fleet anchored at the mouth of Caliana. The expedition rested there for a few weeks, then Raleigh embarked a selected group of his men in five ships, and they sailed for the Orinoco.

When they arrived at the river's mouth, it was arranged

that Kemys and Raleigh's son, young Walter, should go forward in a small boat to search for the mine. Kemys was given instructions that he was not to attack if any Spaniards were encountered, but if attacked he was at liberty to defend. When Kemys and his party landed, a few miles up the river, the Spaniards almost immediately attacked him. His party drove the Spaniards back and captured the town. Young Raleigh was killed in the *mêlée*. Since the Spaniards were in the woods, the English believed it fatal to advance, and after keeping possession of the town for some weeks, they burned it and returned to their base.

Both for the conflict with the Spaniards and for the death of his son, Raleigh berated Kemys, who took the matter so much to heart that he went to his cabin and killed himself. Raleigh then voyaged to Newfoundland, refitted and sailed for England. On the way the crew mutinied and pressed him to turn pirate, but he quelled the uprising and continued homeward bound.

James, on May 13, 1618, had a report of the events at the mouth of the Orinoco. About the same time, Gondomar, the Spanish Ambassador, burst into the palace, shouting 'Pirates! Pirates! Pirates!'; complained bitterly, and demanded that Raleigh on his arrival be arrested and sent to Spain for trial, or at least held till the wishes of the King of Spain should be ascertained.

The negotiations for the marriage of Prince Charles with the Infanta of Spain were then going on, a marriage which was to bring with the bride a dowry of one million crowns. On June 9, James issued a proclamation requiring any subject who had knowledge with respect to the acts committed by Raleigh in the Orinoco to repair immediately to the Privy Council and report. On June 12, Raleigh's ship anchored in Plymouth Harbor. Sir Lewis Stuckley, who had orders to arrest Raleigh, met him on his way to London and took him back to Plymouth, but put him under no restraint for several days.

Both he and Stuckley remained at Plymouth for over a month, then, on July 25, 1618, Stuckley received peremptory orders from the Council to bring Raleigh to London immediately. They arrived at Salisbury on July 27, but Raleigh was so ill that he requested and obtained leave to go to his own

house in London for a few days. There he attempted to escape, but was captured. August 9, 1618, he was put into the Tower.

Coke had again to deal with the man whom nearly fifteen years before he, as Attorney-General, had prosecuted to conviction and a sentence of death, years in which he, too, had suffered somewhat from the vicissitudes of fortune, years that had brought them both to the age of sixty-six. A week after the recommitment of Raleigh, the King appointed on a commission to examine into and report on the case: Coke; Bacon, Lord Chancellor; George Abbot, Archbishop of Canterbury; the Earl of Worcester; Sir Julius Cæsar, Master of the Rolls; and Secretary Sir Robert Naunton; with all of whom, except Worcester and Cæsar, Coke was at the same time serving on the Treasury Commission.

They confronted an embarrassing situation. Since Raleigh had been attainted for treason, he was judicially dead, and not subject to further legal proceedings; unless, indeed, his commission for the Orinoco expedition and release amounted to a pardon. Yet it was rather awkward to put into execution a sentence of death fifteen years after its making, against a man whose defense of himself on his trial had made him a national hero.

Early in October word came from the King of Spain that he would be satisfied with the punishment of Raleigh in England. On October 16, the Commission gave James a written report in which they made alternative recommendations. They suggested as one course that the King simply issue his warrant, and, to explain the situation calling for execution after so long a time, have a narrative published declaring the recent offenses which Raleigh had committed. As the alternative, which the Commission preferred, they suggested that the King have Raleigh brought before the Council and principal judges, to whom some of the Councillors, familiar with the matter, should make a statement of what had happened, and counsel for the King should formally charge him with it. Then, after the Council had heard Raleigh, they should advise the King as to whether he should issue a warrant for execution of the old sentence.

All the Commissioners apparently signed this report and

recommendation. However, the King did not see fit to take their advice. He replied:

As first we like not that there should be only a narration set forth in print of his crimes, together with our warrant for his execution. And secondly, for the other course of a public calling him before our Council, we think it not fit, because it would make him too popular, as was found by experiment at the arraignment at Winchester, where by his wit he turned the hatred of men into compassion of him....We have therefore thought of a middle course, that he be called only before those who have been the examiners of him hitherto, and that the examinations be read, and himself heard, and others confronted with him, who were with him in this action... and then after the sentence for his execution which hath been thus long suspended, a declaration be presently put forth in print, a warrant being sent down for us to sign for his execution.

Lord Chief Justice Montagu, however, objected to issuing a warrant after so long a delay since sentence. He said he deemed it but fair that Raleigh be given an opportunity to show cause why the warrant should not be issued. Accordingly, on October 28, 1618, a writ was issued out of King's Bench to the Lieutenant of the Tower, requiring him to present Raleigh at the bar of the Court of King's Bench at Westminster. When he was so presented, Henry Yelverton, Attorney-General, addressed the Court as follows:

My Lords, Sir Walter Raleigh, the prisoner at the bar, was fifteen years since convicted of high treason by him committed against the person of His Majesty, and the State of this Kingdom, and then received the judgment of death to be hanged, drawn and quartered.

His Majesty of his abundant grace hath been pleased to show mercy upon him until now that Justice calls unto him for execution. Sir Walter Raleigh hath been a statesman and a man who in regard of his parts and quality is to be pitied; he hath been as a star at which the world hath gazed, but stars may fall; nay, they must fall when they travel not the sphere wherein they abide. It is, therefore, His Majesty's pleasure now to call for execution of the former judgment, and I now require order for the same.

Raleigh was then called to the bar and asked what he could say for himself against the issuance of a warrant for his execution. Raleigh urged that the judgment against him had been obtained a long time before and since then His Majesty had

granted him a commission to proceed on a voyage beyond the seas, wherein he had been given the power of life and death over others, and he presumed under that power he was discharged of the judgment. The Lord Chief Justice answered that the Commission could in no way help him, since it did not state that he was pardoned.

For by words of a special nature in case of treason you must be pardoned, and not implicitly. There was no word tending to pardon in all your commission, and, therefore, you must say something else to the purpose. Otherwise, we must proceed to give execution.

Raleigh could urge no further ground for stay.

The Lord Chief Justice ended his statement to the prisoner with the words, 'Execution is granted,' and read the doom:

Since you have been found guilty of these horrible treasons the judgment of this court is that you shall be had from hence to the place whence you came, there to remain until the day of execution; and from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off and thrown into the fire before your eyes, then your head to be stricken off from your body and your body shall be divided into four quarters to be disposed of at the King's pleasure. And may God have mercy upon your soul!

James remitted all but the beheading.

On Thursday, October 28, 1618, Sir Walter Raleigh was taken to the scaffold in the palace yard at Westminster at nine in the morning, conversed there with some friends, made a statement of his activities in Guiana, and his relations with Cobham; and finally turning to the executioner, asked him to show the axe. Sir Walter felt along the edge and smilingly said, 'This is a sharp medicine, but it is a physician that will cure all diseases.' He then laid his hands upon the shoulder of the executioner and forgave him for what he was about to do. Raleigh placed his head upon the block. Two strokes of the axe severed head from body.

Lady Raleigh had the head embalmed and kept it near her in a red bag as long as she lived. The night before the execution of her husband, she had visited him at the Tower and in the course of their talk told him that she had obtained the dis-

position of his body, to which he had answered, smilingly, 'It is well, Besse, that thou mayest dispose of that dead, that hadst not always the disposing of it when it was alive.'

James wrote to his Ambassador at Madrid:

Let them know how able a man Sir Walter Raleigh was to have done His Majesty service if he then pleased to employ him; yet to give them content he hath not spared him when by preserving him he might have given great satisfaction to his subjects and had at his command as useful a man as served any prince in Christendom.

X

THERE had been no Parliament since that of 1614, when the Commons had begun the long Parliamentary struggle by bringing up the matter of impositions, or taxes levied by the King without statutory authority under claim of right of royal prerogative; when, to avoid further discussion, James had dissolved the session without vote of supply. Though the creation of the Order of Baronets, at Bacon's suggestion, had resulted in the sale of baronetcies and other honors until they became so common as to go begging, a continuance of impositions, the sale of Crown lands (enabling Coke at this period to acquire title to the Stoke Poges house, which he had theretofore occupied under lease), the administrative skill and economies of Cranfield, and an accumulation of deficits might carry the Government in domestic affairs, all were too little provision for foreign warfare.

When Frederick, Elector Palatine, married the daughter of James of England and Anne of Denmark on Saint Valentine's Day in 1613, a Gordian as well as a lover's knot was tied, and James was no Alexander. The alliance had not brought England into difficulty until 1619, when, on August 16, the Protestant Bohemian Estates elected Frederick King in the place of the deposed Catholic Ferdinand, who was chosen Emperor two days after Frederick's election to the Bohemian throne. James, uncertain of the right of the Bohemian Estates to depose and elect in this offhand fashion, felt that their conduct was probably rebellion and a threat to the right of kings at the core of his political theory. He knew something, too, of the labyrinth of Central European politics which was leading into the Thirty Years' War.

But the English people then saw only the cause of Protestantism in danger of Roman Catholic domination, and the threatened welfare of their own well-loved Princess Elizabeth. Abbot wrote to Naunton that it would seem that God had provided the jewels left by the late Queen that they might be used for her daughter's preservation. And the spirit Abbot expressed, represented the feeling of England at the time.

At Court, however, another influence besides the theory of the right of kings was a powerfully restraining force. For several years the negotiations over a Spanish marriage for Prince Charles had been going on, with its hope of continuing the peace and of dipping into Spanish treasure by way of dowry, to relieve English royal pecuniary embarrassment without resort to annoyingly awkward Parliaments, at the mere cost of a promise of some toleration for Catholics in England; and the Spanish Ambassador, Don Sarmiento de Acuna, Count Gondomar, with the backing of the Spanish party of Howards and others, dangled before James the hope of a successful conclusion.

Gondomar let James think that Spain, which of course supported Ferdinand in the Central European quarrel, would not go so far as to permit, much less to join in, an invasion of Frederick's hereditary land. Nevertheless, on August 30, 1620, Spinola and 24,000 Spanish troops from the Netherlands crashed over the Palatinate. On condition that Frederick renounce the Bohemian throne, James at last agreed to intervene, authorized and pressed for the payment of a benevolence, and on November 6, 1620, issued a proclamation summoning Parliament. Though Bacon was hesitant about the soundness of this policy, saying that the 'prognosticks are not so good as I expected,' it seemed the only course.

Meanwhile the Commission for the Treasury had done its work. Sir Henry Montagu, Coke's successor as Chief Justice of the King's Bench, who did not greatly enjoy his task there, made an offer for the Lord Treasurership, and in December, 1620, got the position and the honor of becoming Viscount Mandeville. Sir James Ley, a man of sixty-eight, married Elizabeth Butler, a young niece of Buckingham's, and procured the vacant Chief Justiceship.

Coke stood for the new Parliament, and was returned mem-

ber for Liskeard. Although when an officer of the Crown, as he entered in his own brief memorandum of his life, 'for 24 years from 34 Eliz. to 14 Jac., he was attendant and assistant to the Lords' House of Parliament and called thereto by writ,' more than a quarter of a century had passed since he was a member of the Commons.

It was apparent that the royal favor was not likely to bestow on him permanent office other than his Councillorship. At the age of sixty-nine, with unabated vigor, he entered into a new phase of his career as a leader in seven and a half years of Parliamentary history which determined the course of the English Constitution and the rights of peoples under the jurisdiction of English-derived law. In the new Parliament of 1621, Bacon, as Chancellor, presided over the House of Lords; and in the Commons, zealous Coke, still pursuing the bubble reputation blown to a new course by the winds of fortune, but also still firm for the integrity of the law, a Privy Councillor, intimately acquainted from long experience with the ways of the Government, with a great legal reputation, was the man whom the insurgents, less experienced, looked to for advice, especially valued in the complicated legal questions which came before the Session.

A few days later, Bacon enjoyed his creation as Viscount, with all its ceremonies of robe and coronet. This marked the apex of his career — Chancellor, Lord Verulam, and finally, St. Albans. A few months earlier, he had published the 'Novum Organum,' which spread more widely and rooted more deeply his fame in the world of scholars.

XI

PARLIAMENT met January 30, 1621. The Commons appointed Coke on a commission for the revision of the statutes (a work Bacon had frequently advocated), presented to James a petition for the enforcement of the laws against recusants, soon granted two subsidies, 164,000*l.* for the relief of the King, and delayed further grant for information from the Crown of its needs for war in the Palatinate. While they waited, a debate on the scarcity of money in the Kingdom brought up a question of the patent granting a monopoly on the manufacture of gold and silver thread, and with it the whole matter of mono-

polies which the Council had anticipated would break in the new Parliament.

These grants of patents of monopoly, admitted to be within the royal prerogative if properly founded, had grown to great number under Elizabeth, who had used them to benefit favorites and in lieu of other reward for service to the Crown, and had been a source of complaint from time to time in her reign.

Their legal basis, so broadly indefinite as to be readily susceptible to abuse, lay in showing that a particular monopoly was for the public interest, whether as means for affording better supervision in matters deemed to need supervision for the public welfare, or as tending to increase commerce, or, the one branch still continued in the patent laws, tending to develop industries through the protection of invention, which then covered not only the inventor, but also any person who discovered an invention in use abroad and brought it into use in England.

The monopoly question, of course, was no new thing to Coke. Elizabeth had, January 23, 1601, ordered him with Fleming to go into the matter; but the Essex trial had interrupted their work. In the ensuing Parliament, Bacon had stood up as a defender of the Queen's prerogative in granting them.

The practice in James's time was to refer the proposed grant to one or more of the Councillors or principal non-judicial officers of the Crown to pass on its 'convenience' or desirability, and to one or more of the principal judges and law officers to pass on its legality. These were the 'referees.'

People objected especially to the grants under James for the manufacture of gold and silver thread, a process brought from abroad; for licensing inns under the plea of better supervision, and under the same plea, for certifying to the Council the recognizances of alehouse keepers. Agents for enforcement oppressed, and informers flourished. Sir Giles Mompasson, a relative of Buckingham's, was a principal patentee of both the inn licensing and the gold and silver thread monopoly.

In the matter of the gold and silver thread monopoly, the King, under Bacon's guidance, had created a special commission for search and punishment; and, on the advice of Bacon,

Chief Justice Montagu, and Attorney-General Sir Henry Yelverton, he increased the powers of the Commissioners, and authorized them to prosecute offenders in the Court of Star Chamber instead of in the Court of Exchequer Chamber.

On the suggestion of Bacon and Montagu, the King approved a requirement that goldsmiths and silkmen should not sell their material for thread manufacture to unlicensed persons, and under this, five mercers were arrested. Yelverton committed them to the Fleet, but, alarmed at the general hostility, said that if Bacon did not confirm the commitment, he would release them. After a hearing, Bacon sent them back to prison. This imprisonment stirred an uproar in the City. The King heard of the objections and freed the prisoners, saying he would not govern his subjects by bond; but at the same time, he made a fresh proclamation confirming the monopoly.

To punish Yelverton for his lack of vigor, Buckingham raked up against him the charge that in drafting a new charter for the City of London, he had inserted some clauses without warrant (at worst a misunderstanding of the King's instructions), had him suspended from office and prosecuted in the Court of the Star Chamber, which sentenced him to dismissal from his office, fined him 4000*l.*, and imprisoned him at the royal pleasure.

Gold and silver thread touched relatively few; inns and ale-houses, many. Bacon, perhaps conscious that he, in having approved some of the patents as legal, might be subject personally to attack, wished to deflect the storm from Parliament, and urged in Council a prompt discontinuance of the most oppressive of the monopolies and the adoption of an attitude of readiness to abandon them all; but the advice prevailed that it was better to preserve them for a Parliamentary grievance on which the Crown was ready to yield, and so perhaps draw lightning away from other matters of the prerogative. Coke, with all his personal knowledge as a member of what had taken place in the Council, which he was not at liberty to tell, but could nevertheless take advantage of for his own guidance, sat in the Commons when the storm broke.

'There are three sorts of patents,' said Coke in the debate; '1st, directly against the law; 2nd, good in law, but ill in ex-

ecution; 3d, neither good in law nor in execution.' He instanced the patent for inns as an example of his second class, but later he reported from the Committee that it had found the patent an exorbitant grievance both in itself and in its execution. He had spoken so freely of the abuses that had grown up in making these grants to favorites, that some questioned the fitness of a subject taking upon himself to prescribe how the King should bestow his benefits. Coke answered, 'I hope every one that says "Our Father which art in Heaven" does not prescribe God Almighty what he shall do; so we speak of these things as petitioners to His Majesty, not as prescribers.'

Coke knew that he was a great lawyer and had a great reputation, and this knowledge sometimes induced an overconfidence that led him into wrong positions, and an expectation that his statement of law would be accepted as the law. He reported that Sir Francis Michel, a lawyer and a justice of the peace, was the worst of the offenders in the ill execution of the patents. Thereupon Michel, who had not been heard, sent a petition to the Commons in his own behalf, saying that all he had done had been approved by the most eminent lawyers. When this petition was received, Coke said that Michel 'was unfit to be a justice of the peace; and that he should be declared to be unworthy and disabled to be of that commission; that he should make resitution to all of whom it could be proved that he had received anything for this business; that he should be sent to the Tower until he be put out of commission, and until he should make an humble submission here at the Bar on his knee.' Accordingly, the House ordered that he be sent 'of two o'clock of the afternoon to the Tower on foot.'

So the House, at Coke's instance, had constituted itself a judicial body, though acting in a most unjudicial manner in a matter which in fact was no offense against itself or any of its members, and sent this man to prison. When some one later expressed doubt of the authority of the Commons for its action, Coke thought of the answer that the offense against the House lay in Michel's presenting a petition after the patent had been voted a grievance; and, delving into his memory for support, was able to recall a case that had happened more than twenty-five years before when he was Speaker; and he said that since the law in the matter was not known to everybody,

he would state it, and asked that the statement be entered in the record; to have it complete, however, he felt that further advice was desirable; and the House sent three of its members to search the records in the Tower. They searched, but found no precedent such as overconfident Coke had indicated, and reported the opinion of the Committee that 'they must join with the Lords for the punishing of Sir Giles Mompesson, it being no offense against their particular house or member of it, but a general grievance.'

When, however, the Commons first sent its message to the Lords, it happened, quoting the words Bacon, who as Chancellor was presiding in the Upper House, wrote the King: 'As good luck was, the House [of Lords] read two bills and had no other business at all. Whereupon my Lord of Canterbury made his motion, and I adjourned the House till Saturday [it was then Wednesday]. It was no sooner done, but came the message from the Lower House, but the consummation est was past, though I perceived a great willingness in many of the Lords to have recalled it if it mought have been.'

On resolving to present the case of Mompesson, the Commons set on guard over him the Serjeant-at-Arms, who, however, delicately refrained from following when the knight went into his lady's bedroom, whence he escaped out of the window and got to the Continent.

When finally the message of the Commons was delivered, the Lords agreed to the conference, which was set for some days later. The blame for the unpopular monopolies was to be placed somewhere. Though the King had granted the patents, he had acted only after taking advice from the referees; and the Commons, partly for the purpose of avoiding a criticism of the King himself, were taking the position, then far in advance of the development of the Constitution, of holding officers of the Crown responsible to the House for the advice they had given the King.

Opinion had developed among a large number of the members of the Lower House that it should not insist on raking a scandal out of the past of the monopolies, but should substantially confine itself to the endeavor only of putting an end to the patents themselves. Those who wanted a condemnation of the referees were, however, a determined group, led by Coke

and by Cranfield, who had joined the stout-hearted lawyer in the attack, with an aim especially at the man who presided in the Lords.

Bacon had been one of the referees both in the gold and silver thread patent and in the patent for inns, and had kept the five mercers imprisoned. Those who did not like him had a scent and were baying in the chase. Coke and Cranfield each had the 'practical' man's contempt for the philosophic mind. Cranfield, Master of the Wards since William Knollys, Viscount Wallingford, Suffolk's son-in-law, had been forced out of the position in the general ousting of Howards and their connections, had a personal quarrel with the Chancellor over a matter of jurisdiction, but Coke's grudge against his rival was of longer standing.

In hopeful mood, Bacon wrote to Buckingham:

I do hear from divers of judgment, that to-morrow's conference is like to pass in calm as to the referees. Sir Lionel Cranfield, who hath been formerly the trumpet, said yesterday, that he did now incline to Sir John Walters's opinion and motion, not to have the referees meddled with, otherwise than to discount it from the King: and so not to look back, but to the future. And I do hear almost all men of judgment in the house wish now that way. I woo nobody. I do but listen, and I have doubt only of Sir Edward Coke, who I wish had some round caveat given him from the King; for your Lordship hath no great power with him: but I think a word from the King mates him.

As Bacon had surmised, the proponents for the Commons before the Lords did not name any of the referees, 'which,' wrote Chamberlain, 'Sir Edward Coke who came next them' (the speakers named) 'spared not (besides his own part) to lay open, desiring their Lordships not to conclude anything upon this conference till they heard further.'

Since the speakers for the Commons, except Coke, had no legal evidence or personal knowledge of the names of the referees (and his Councillor's oath prevented Coke from using knowledge he had gained at the Council Board), the others, on their return to their own House, gave their lack of proper evidence as the reason for their failure to name them; but the Commons would not accept this excuse, and sent two of the Committee back with instructions to name the referees. James tried to avert the further meeting with a demand that the

matter of additional supply be taken up before other business, but both Houses declined to postpone the meeting. At the conference, Bacon, stepping from the Woolsack, and Montagu, who had been a referee with Bacon in the gold and silver thread monopoly, spoke in their own defense, and brought upon themselves the censure of the Lords for doing so without permission. The situation was getting critical.

Buckingham, who at first thought that the responsibility of the referees was a sufficient protection so far as he was concerned, began to fear that the flood would break through to him, and sought the advice of John Williams, then Dean of Westminster, who told him to take the initiative, throw the patents overboard and let go with them those who must. This plan was not far from the one the Council had agreed on before the meeting of Parliament and lost sight of under the attack.

It was all very good for Buckingham, but not so good for Bacon, who, prophetically, told the King, 'Those that will strike at your Chancellor it is much to be feared will strike at the Crown. I wish that as I am the first, I may be the last of the sacrifices.' When Bacon asked for Buckingham's good word with James, the Duke told the Chancellor that he already stood so high with the King as to need no aid, and Bacon somewhat wryly replied, 'That may be true, but I have always observed that however bright a fire may be, it burns more brightly if it is blown.'

Following Williams's advice, Buckingham spoke at the conference in a grand way, in effect offering to sacrifice the patents and to aid in punishing any evildoers. When the Commons learned of Buckingham's speech, they carried, on the next day, March 14, 1621, the bill against monopolies which Coke had introduced, and, on the day following, laid formal charges against Mompesson before the Lords, but said nothing more than against the referees. Could Bacon breathe easily once more?

XII

BACON learned that information had been given on which he would be accused of bribe-taking, and on March 14, 1621, wrote Buckingham: 'Your Lordship spoke of Purgatory. I



THE DUKE OF BUCKINGHAM AND FAMILY
National Portrait Gallery, London

am in it now, but Job himself, or whoever was the justest Judge, by such hunting for matters against him as hath been used against me, may for a time seem foul, specially in a time when greatness is the mark and accusation is the game.' He hoped Buckingham and James would extricate him from his troubles; neither Buckingham nor James, however, cared about Bacon except as he was useful, but were only concerned in avoiding trouble for themselves.

The group which had been pursuing Bacon on the monopolies willingly followed the new and stronger scent. On March 15, 1621, Sir Robert Phelips, in the House of Commons, openly accused the Lord Chancellor of corruption; and on the 17th, the House ordered Coke, Phelips, and several others to draw the formal charges. On the 19th, James sent word to the Commons that he was sorry a person so much advanced by him, and sitting in so high a place, should be suspected; that he could not answer for all others under him, though his care in the choice of judges had been great; and that if the accusation should be proved, he would punish Bacon to the full. He then half-heartedly urged the appointment of a commission under the Great Seal of England, to examine witnesses on oath concerning the judges; but Coke, thoroughly vigilant of the rights of the House, warned the members to take heed that the Commission did not hinder their own proceedings. The Commons rejected the offer of the King, and its committee requested a conference with the Lords for the purpose of presenting the charges to them.

Claiming illness, Bacon, on March 19, requested that the Lord Chief Justice Ley be temporarily appointed in his place. Undoubtedly he was sick, both in body and in mind. He wrote to the Lords asking them to refrain from condemning him until his cause should be heard, and requesting time to consult with counsel and make his answer. He promised that his counsel's part should be the least; that he would not 'trick up an innocency with cavillations, but plainly and ingenuously declare what he knew or remembered.' Buckingham delivered the letter on March 20, the day set for a conference between the Lords and the Commons, at which the committee of the Lower House submitted the evidence against Bacon.

For the next few days witnesses were being examined, and

charge after charge piled up against the Chancellor. On the 25th day of March, Bacon, hoping for assistance, again wrote to James and pointed out that he had been no voracious oppressor of the people; that he had never been haughty or intolerable to any one; that as he had begun his career in the House, so it now seemed it must be his place of sepulture. 'And for the briberies and gifts wherewith I am charged, when the book of hearts shall be opened, I hope I shall not be found to have the troubled fountain of a corrupt heart in the depraved habit of taking rewards to pervert justice; however I may be frail and partake of the abuse of the times.' He ended by saying: 'that which I thirst after, as the hart after the stream, is that I might know by my matchless friend that presenteth to you this letter [Buckingham] your Majesty's heart towards me.' But neither his matchless friend nor the illustrious James cared to be the sacrificial lamb in order that Bacon might live. On March 27, the House adjourned to April 17 for the Easter holidays, and Bacon was able to obtain a brief respite.

He retired to Gorhambury, where, though visited by many friends, his mind turned from worldly things. He composed a prayer, and on April 10 made his will, wherein he bequeathed his name 'to the next ages and to foreign nations.' On the day before the House was to meet again, he conferred with the King. He admitted that he had accepted gifts, some even while causes were still pending before him; and he looked to James once more for assistance, but James simply referred him to the Lords.

Committees of the Lords investigating the several accusations made their report April 19, and adjourned until the 24th to prepare a single brief of all the charges and examinations. On the 20th, Bacon wrote to James, thanking him for the privilege of the interview of the previous day, and added that he would not disguise or excuse in his answer to the charges. 'If there be anything which I mought conceive to be no offense and yet is, I desire to be informed that I may be twice penitent, once for my fault, and the second time for my error.' On the 21st, Bacon wrote to James asking leave to resign from his office and hand over the Great Seal. 'This is the last suit I shall make to Your Majesty in this business, prostrating my-

self at your mercy's seat, after fifteen years' service wherein I have served Your Majesty in my poor endeavors with an entire heart. . . and now only craving that after eight steps of honor, I be not precipitated altogether.'

James did not even answer. On the 22d, the distracted Bacon sent word to the Lords making a similar offer of resignation. The sincerity and sorrow of a great man who has made a mistake, and for the first time realizes it, are shown in Bacon's letter. He says:

In the midst of a state of as great affliction as I think a mortal man can endure (honor being above life) I shall begin with the professing of guiltiness in some things. The first is that hereafter the greatness of a judge or magistrate shall be no sanctuary or protection of guiltiness; which, in few words is the beginning of a golden world. The next, that after this example it is like that judges will flee from anything that is in the likeness of corruption as from a serpent; which tendeth to the purging of the courts of justice, and the replacing them to their true honor and splendor. And in these two points, God is my witness that though it be my fortune to be the anvil whereupon those good effects are obtained and wrought, I take no small comfort.

Bacon humbly asked that a penitent submission and the loss of his seal might be considered a sufficient punishment.

The Prince of Wales delivered his letter to the Lords. It was read to the House, first by the Clerk, then by the Lord Chief Justice. It made so profound an impression that for a long time no one spoke. Then the Lord Chamberlain asked the House whether this submission of Bacon was sufficient. The Lords as a committee of the whole considered the question, and finally concluded that the submission was not enough. A member whom a decision by Bacon had pinched said, 'He desires to be a judge — to lose his seal, and that to be the sentence.' The submission was returned with a copy of the charges. After some discussion, the Lords gave him five days within which to make his reply.

On April 20, the Lord Chief Justice received the 'confession and humble submission' of the Lord Chancellor: 'Upon advised consideration of the charge, descending into my conscience and calling my memory to account so far as I am able, I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defense and put myself upon the grace and

mercy of your Lordships.' Then followed the particular confession with respect to the separate charges — twenty-eight in number. Detailed as the confession was, it still was not enough for the Lords. They sent a committee of twelve to ask whether the signature to the confession was in his own hand. The anguished Bacon answered, 'My Lords, it is my act, my hand, and my heart.'

The Lords then requested the King to sequester the Great Seal, and he appointed a commission to receive it from Bacon and keep it in charge. Bacon was summoned to appear before the Upper House on May 9, 1621, to receive his sentence. All the judges and the House of Commons were to be sent for, and the Serjeant was directed to carry the Lord Chancellor's mace, and to show it, but not to carry it before Bacon as was customary while he had the Seal. But the elaborate ceremonies of degradation were never carried out. The Serjeant reported Bacon so sick in bed as to be unable to appear. On the day, however, the charges were read, followed by the confession. The Lords quickly imposed on Bacon a fine of 40,000*l.*, imprisonment in the Tower during the King's pleasure, declared him incapable of holding any office or employment in the state, and ordered that he should never sit in Parliament nor come within the verge of the Court.

On an examination of the evidence against Bacon, one regards him as a most unfortunate, rather than as a morally guilty man. Always incautious in money matters, finding no amount of funds ever sufficient, he had been careless, but quite without a realization of wrongdoing, in accepting money before considering whether on all the facts the case might come before him further. At a time when the taking of a gift after a cause had been completely disposed of was regarded as proper, it was easy to slip over the line, especially as it was often difficult to say that no aspect of a suit would ever rise again. When Bacon came to a consciousness that he had conducted himself improperly, his frank, full confession shows a high moral position in meeting a great crisis in life.

Words used in his confession might lead one, without a knowledge of the facts, to assume the case against him worse than it was. The Lords might well have inflicted less disgrace on him. But his political views as a strong supporter of the

royal prerogative counted to his disadvantage in the popular assemblage of the Commons, which had the initiative in preferring the charges against him — views which he had expressed as one of the most honored members of that House, views that, however, became obnoxious when, backed by all the power of the Chancellorship, they clashed with more popular ideas. His fondness for cutting a figure stirred some to animosity. Besides, he had a witty tongue, and like other men of similar mental characteristics, he could not forbear an epigram, conscious himself only of its wit, but its victim naturally feeling only its sting and not in the least appreciating its felicities. Coke had his grudge rooted with the growth of many years; he was a fighter; his own hurts had not fully taught him the lesson of pity for others. A greater generosity would have forborne taking any part in pursuing his antagonist to the bitterness of such a complete downfall. But Coke himself would not have expected quarter, and he gave none.

Coke grew to respect the eminent legal abilities of his lifelong rival, and became fully just and generous in acknowledging them. Of them, the great common law lawyer was fully able to judge; and praise from him was praise indeed. Into the man with the dream and the vision his own mind had no penetration. To him, Bacon's work on the foundations of scientific method was sheer folly. When Bacon presented him with a copy of the 'Novum Organum,' part of his great plan of the 'Instauratio Magna,' and so entitled, Coke wrote on the title-page:

Edw. C. ex dono auctoris
 Auctori Consilium
 Instaurare paras documenta sophorum,
 Instaura mores justitiamque prius.

Which might be given in a free translation as:

Advice to the author
 First restore what the wise ones have written,
 And prepare to renew what is just and the law.

Seemingly a protest against the prevailing of what to Coke was the poorer reason of equity. The frontispiece bore the device of a ship passing between the Pillars of Hercules, and

Coke, alluding to a book of the time, Sebastian Brand's 'Shyp of Folys of the World,' wrote beneath:

It deserveth not to be read in schools,
But to be freighted in the Ship of Fools.

Since, when the Lords imposed their sentence on Bacon, he passed finally out of the life of Coke, these pages may properly present here the few words remaining to be said of the disgraced Chancellor. After a few days in the Tower, whither he actually went as soon as he had sufficiently recovered from his illness, the King so far showed his appreciation of his faithful and distinguished service as to release him from imprisonment, without, however, removing the prohibition of the verge of the Court. Instead of merely remitting the fine, James, to protect Bacon from his creditors, assigned it to trustees for his benefit. The King also granted him a pension of a thousand pounds a year. Bacon retired to Gorhambury and wrote his 'History of Henry VII.' When Buckingham expressed a desire for York House, Bacon offended him by declining to assign his long term lease; but finally, understanding that his refusal to part with the place to some one still entitled to Court favor stood in the way of his readmission to the verge, Bacon, since Buckingham professed no longer to desire the house himself, parted with it to Cranfield.

In financial difficulties, pension in arrears, creditors pressing until the King ordered that they should consider a composition offer, Bacon endeavored to dispose of his house at Gorhambury, and offered it to Buckingham. Then the former Chancellor, to save expense, the prohibition of the verge finally withdrawn following his assignment of his York House lease, retired in 1622 to his Chambers at Gray's Inn, and on the King's failure to accept his offers to make a digest of the laws of England and of other writing service, he continued his work on the 'Natural History.' So in his last years, he viewed the lawns of his ancient Inn of Court, which, with the presence of his creative mind, became even more the university, the purposes of which the Houses of the Law so largely fulfilled at the time. While out driving and in the course, it has been reported, of carrying on an experiment in refrigeration, he fell ill, and seeking shelter in a house of Lord Arundel's, died there April 9, 1626.

XIII

WHILE the Lords were disgracing Bacon, the Commons proceeded with their affairs. Then James directed Parliament to adjourn. Though when the monopolies were under discussion, the Commons had paid no attention to the King's request, unaccompanied with a statement of intention as to war, for a further vote of supply, on the day the House adjourned June 4, 1621, it passed a declaration of readiness to support the King in war if he failed in a peaceful settlement of the affairs of the Palatinate; and, before the motion to adjourn was put, Coke, with tears in his eyes, stood up and repeated the prayer for the royal family, to which he added, 'and defend them from their cruel enemies.'

Coke's language in the recent proceedings in the Commons had characteristically not always been temperate, and the irritation it caused among those at the Court may have been back of an attack made on him during the recess of Parliament. One Lepton, and a member of Gray's Inn, Goldsmith, felt aggrieved at some decision of a committee of the Commons of which Coke was Chairman. They caused a bill against Coke to be filed in the Court of the Star Chamber, accusing him of misconduct as a judge. James was annoyed when the Commons, on resuming its session, began to inquire into the matter. Goldsmith, who was arrested and had his papers searched, confessed that he was in error. Lepton fled. And the Star Chamber later completely vindicated Coke.

During the recess, James endeavored to effect an adjustment of the affairs of his son-in-law by trying to induce him to abandon his claims on Bohemia and submit to the Empire, and by trying to persuade the Emperor to withdraw from the Palatinate; and made no actual preparation for war. Philip III had died March 21, 1621, and the boy Philip IV came to the Spanish throne. Though the end of the truce of Antwerp directed the attention of Spain to the renewal of war with the Dutch, by October Frederick had lost substantially all the Palatinate except where Mansfeld's freebooters might feed at some crib they were able to seize. Buckingham, hauling on the Spanish side, was for war with the Dutch over their exclusion of English commerce in the blockade of the Flemish

ports; but the situation in the Palatinate had aroused James to scraping up some money and sending it to Frederick.

Foreign affairs were in this condition when Parliament re-assembled November 20, 1621. John Williams, become Bishop of Lincoln, the new Lord Keeper, appointed July 16, 1621, presided in Bacon's place over the Lords. Henry Montagu, Lord Mandeville, who did not like the Spanish leaning of the Court, had been persuaded to resign his post as Lord Treasurer in September, 1621; and Lionel Cranfield, made Baron Cranfield, July 9, 1621, in offset to some expectation of the Chancellor's position before the designation of Williams, had been appointed to the Treasurership.

As a message from the King, who, staying at Newmarket under plea of illness, did not appear in person, Williams told the members of the Lower House that they should avoid all long harangues and make the grant of a supply for the Palatinate their immediate business. But the Commons wanted assurance that the supply would actually be used to free the Protestant land of Frederick and Elizabeth, with a special slant toward Spain in the war for that purpose. Among the many speakers, Coke, whose anti-Spanish feeling was sound Elizabethan, loosed one of his vituperative harangues against the old national enemy. The Commons, along with their stirring against what they felt was a renewal of the Spanish menace to the national life and religion, felt also that the English Protestant faith should be more carefully guarded against any weakening from within through leniency to Catholics. They prepared a petition to the King praying for greater strictness with recusants, for an alliance with the Protestant states of Europe, for war with Spain, and a Protestant marriage for the Prince of Wales.

On learning through Gondomar of the petition, the King forestalled its presentation by angrily rushing a letter to the Speaker in which James told the Commons that they were dealing with matters that were none of their concern; forbade their mentioning the marriage of the Prince with the 'Daughter of Spain'; told them they must not interfere with private suits, a reference to their investigation of the Lepton and Goldsmith matter of the Star Chamber proceedings against Coke. Most ominous of all, however, he told them that he

thought himself free and able to punish any man's misdemeanors in Parliament, both during their sitting and afterwards, and he would not in the future be sparing in his use of that power upon any man's insolent behavior there, and that if their petition mentioned any of the forbidden topics he would not hear it unless they reformed it.

The Commons then sent, instead of the petition itself, an explanation stating that their discussion of the defense of the Palatinate, which the King himself had bidden them consider, had brought in the other matters. They said they knew the decision on war and peace and the marriage of his son rested with him, and they had ventured only to express their views; but, though courteous, they firmly declared their right of immunity from interference with their proceedings.

'Bring stools for the ambassadors,' the King ironically ordered his attendants when the deputation came with this explanatory petition to him at Newmarket: the long letter he then gave in answer, however, did not again threaten their liberty of speech. But afterwards he wrote again, saying, in effect, that though what they called their rights were in fact grants from his predecessors on the throne as they should have made dutiful acknowledgment, he had no intention of diminishing their privileges.

When this letter from the King was read in the House, Coke moved that they spread on their record a protestation of the rights they claimed; and the next afternoon the Commons, sitting by candlelight in their ancient hall of Saint Stephen's Chapel, so resolved, and had engrossed in the Journal the following protestation:

The Commons now assembled in Parliament, being justly concerned thereunto, concerning sundry liberties, franchises and privileges of Parliament, amongst others not herein mentioned do make this protestation following: That the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, state, and defense of the realm and of the Church of England, and the making and maintenance of laws, and redress of grievances, which daily happen within this realm, are proper subjects of counsel and debate in Parliament; and that in the handling and proceeding of those businesses every member of the House hath, and of right

ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion the same: That the Commons in Parliament have like liberty and freedom to treat of those matters, in such order as in their judgment shall seem fittest, and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation other than by the censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters, touching the Parliament or Parliament business; and that, if any of the said members be complained of and questioned for anything said or done in Parliament, the same is to be shewed to the King by the advice and assent of all the Commons assembled in Parliament before the King give credence to any private information.

Two days later, December 19, 1621, pursuant to the King's command (indicated before the Protestation), Parliament adjourned till February.

A week went by after the adjournment, and on the first day of the second week, on December 27, 1621, Coke was sent to the Tower.

A little later Phelips and Mallory, both of whom had joined in the attack on Spain, were also ordered to the Tower, and Pym was directed to confine himself to his house in London.

Three days after Coke's imprisonment, the King came to Whitehall, sent for the Journals of the Commons, and in the presence of the Council and the judges tore the detested protestation from the book; and on January 6, 1621, though he had received no further supply, he dissolved the Parliament.

XIV

So Coke lodged in the Tower, whither in his time he had played his part in sending Essex, Southampton, Raleigh, Cobham (whose former quarters Coke now in his turn occupied), Sir Everard Digby, Lord and Lady Somerset, and so many others. James had lived his early life in a land where, when people wanted their way, they had drawn swords and abducted him; but he had come to feel that possibly these English, though dealing more gently, nevertheless meant what they said when they spoke. Since it was best not to be more provoking than necessary, word was at first given out that the arrest of Coke had nothing to do with his speech-making and his moving the Protestation in Parliament. In the hope of

finding some other cause against him, James had Sir Robert Cotton and Sir Thomas Wilson overhaul his study and chamber at the Temple and bring to the Council table various papers found there. A simple-minded servant of a Mr. Bing, a counsellor of Gray's Inn, who spoke of the harsh treatment of Coke, and said there would be a rebellion, was put to the rack.

Thomas Howard, Earl of Suffolk and still a Privy Counsellor and Lord Chamberlain, must, slightly at least, have enjoyed calling at the Tower on Coke, who had helped send him on his enforced visit there a short time earlier, and had wanted to fine him 100,000*l.* Suffolk, and the other Thomas Howard, Earl of Arundel, with Henry Montagu, Viscount Mandeville, become President of the Council, were the deputation who examined the imprisoned lawyer. Arundel was reported to have said that he would charge Coke with treason for having so spoken in Parliament as to tend to stir up the subject's hearts against their sovereign. But let the report the Reverend Joseph Mead wrote to Sir Martin Stuteville, January 22, 1622, tell something of the current story of this interview:

That my Lord of Arundel telling Sir Edward Coke that he had heard him affirm, that by law, he that should go about to withdraw the subjects' hearts from their king was a traitor; Sir Edward answered, that he was so indeed; but that he that went about to withdraw the King's heart from his subjects, he held to be an archtraitor: moreover, my lord told him, that though he were a close prisoner, yet his majesty would allow to come unto him eight of the best learned in the law to advise him in his cause. He answered that he thanked the King for his gracious favour; but he knew himself to be accounted to have as much skill in the law as any man in England; and therefore needed no such help, nor feared to be judged by the law in that he was accused. He knew his majesty might easily find, in such a one as he, whereby to take away his head; but for this he feared not what could be said.

On February 2, 1622, Mead wrote further to Stuteville:

It is said the prince interceding lately for Sir Edward Coke, his majesty answered he knew no such man; and when the prince interceded by the name of Mr. Coke, his majesty still answered he knew none of that name neither. But he swore there was one Captain Coke, the leader of the faction in Parliament.

While Coke meditated in the Tower uncertain of his fate, not all things were going against him. The old proceeding in the Hatton land matter, earlier mentioned in the incident of the dissensions of Coke and Lady Hatton, was cleared. Chamberlain, writing to Carlton, July 13, 1622, reported:

The term is passed over without any matter of great note, more than that Sir Edward Coke is cleared in the Court of Wards by the sentence of all the judges that were present at the hearing of the case (and by consent of the rest) at Serjeants' Inn, that he was neither in law nor conscience to be charged with anything touching the extent, either toward the king, or toward his heir; which comes ill to pass for Sir Thomas Hatton and Mr. Gibbe, who followed the suit at great charge, and were to have had a great share of it, if it had hit right, for Sir Henry Yelverton spoke it openly and confidently in court, that he would not abate him sixpence of fifty thousand pounds on arrearages, which morsel they had half devoured, but now may say, *quanta de spe decidi!* I hear this censure is nothing pleasing, and that the judges must show good cards, and be ready to give a good account of their doings.

In connection with this suit a very pretty story was told which shows that Coke, for all his often unpleasant ways, won the loyalty of warm and admiring friends. When Sir John Walter, a fellow barrister and a leading member of the Parliament recently ended, was asked to take instructions for a brief against Coke in this case, he refused, saying, 'Let my tongue cleave to the roof of my mouth whenever I open it against Sir Edward Coke.' No wonder that Coke, when drawing his will a little more than a year later, inserted the name of Walter as one of his executors, but his good friend failed him at the last from the inexorable cause. Walter had died several years before the will was probated.

For all their searching the King and Buckingham and the adherents of the Court were obliged to come to the conclusion that they could find in Coke no evil for which they could convict him of any crime. Through his stand in Parliament, and his suffering imprisonment for it, he had gained wide popularity, and his detention without definite accusation became highly impolitic. So after seven months, they released him, August 8, 1622, under a restriction that he should not travel more than a limited distance from his house in the country. Phelips and Mallory were released at the same time; Pym had

been permitted to leave his London house earlier; all still under the same restriction as Coke.

One of Coke's contemporaries, Lord John Digby, English Ambassador to Spain, then soon to become Earl of Bristol, a man of clear knowledge and sound heart for England's place in European affairs, said of the recent dissolution that if the King had listened to his Parliament he might have laid down the law in Europe, but as it was he would have to obey the King of Spain. James had thrown away his supply and said, 'I will govern according to the good of the commonweal, but not according to the common will.' He doubled the imposition on wines, laid a special payment of nine pence in the pound on all commodities imported by aliens, and asked a new benevolence by which he thought he would easily get 200,000*l.*, but in nine months raised only 88,000*l.*, which he sent to the Palatinate. There the English volunteers under Vere were giving a good example of honorable conduct not followed by the vagabonds of Mansfeld, a leader whose irresponsibility, added to that of his nominal Prince, made impossible any settlement of German affairs by negotiations.

The Spanish use of the proposed match of the Infanta and Prince Charles, as an expectation to keep James well disposed, was favored by the delay of the Pope in granting a dispensation, for which Rome desired terms highly advantageous to English Catholics. At last Rome made known that a condition of the dispensation would be liberty of worship for Catholics in England and some guarantee for its maintenance, a condition impossible for James to fulfill if he had wished. Finally, February 18, 1623, Buckingham, accustomed to having all his own way in England, and thinking that he could bring to pass in Spain what Digby could not accomplish, a completion of the marriage treaty, set out with Prince Charles on that amazing journey, through which they thought by a brilliant surprise to carry all obstacles before them. Their blunders, the fears of James and of England, and somewhat of themselves, that Spain would detain the Prince as a hostage, the frustration of their hopes, and their final return to England, October 5, 1623, belong rather to a life of Buckingham and the history of England than to a life of Coke.

XV

BUCKINGHAM returned disgusted with Spain, as eager to make an end to the Spanish match as he had been to bring it about, and desiring England to join in a war against the people who had not yielded to the magnificence of his presence among them; and James, almost maudlin with relief at getting back 'Steenie' and the boy, and realizing that the Spanish terms were impossible of acceptance, was in a state to be worked upon. But they must put money in the purse. However, in the new Parliament that they would be obliged to call to meet their need, they did not want Coke sitting, and devised a scheme to keep him out of the way. Chamberlain wrote of it to Carlton under date of January 3, 1624:

Before the parliament was fully agreed, Sir Edward Coke was sent for to the council-table, and told the king had a special use of his services in a commission into Ireland; so that he was willed to prepare himself to be gone within forty days. Being surprised with this sudden alarm, and pausing awhile, the council required him answer, which he gave in a few words, that he came not hither to answer, but to obey; and, within two days after, went into Norfolk to settle his affairs. Sir Edward Sandys, Sir William Jones, and one Auditor Phillips are joined with him in the same commission. It was since said, that the prince had laboured for his stay, and to save him from so hard a journey, in respect of his years, being three score and fourteen, and of some other construction that must be made of this employment. But, for aught I hear, he must go.

The stout old lawyer and patriot was a loyal subject in spite of all the abuse that had been heaped on him.

Later in the same day Chamberlain wrote to his correspondent:

The writs for the parliament are sent away this day and I hear the Lord Coke's journey is yet in question.

The King had signed the warrant for the writs on December 28, 1624.

On January 17, 1625, Chamberlain wrote again to Carlton:

Sir Edward Coke, is likewise chosen for two or three places, as Coventry, Windsor, and I know not where else: but he prepares himself to be gone, and took his leave of the king on Monday, and kissed his hand. The poor man sets a good face on it, and makes show to go cheerfully; but, in secret, tells his friends he never ex-

pects to see them again. Indeed, it is thought a hard journey for a man more than three score and fourteen years old, and that never was at sea.

And that never was at sea. The words tell much of him. No foreign contact had ever worn down a single sliver of his complete Englishness.

The popularity of Coke appears in this election from several places. The returns helped dissolve the uncertainty he was in with respect to the Irish mission, for the Court saw that it was impolitic to carry out so patent a scheme and withdrew the proposal. He chose to sit for Coventry, where so many years ago he had been Recorder. The Houses assembled February 19, 1624, and as Chamberlain wrote again, three days after the opening:

Sir Thomas Crew, the Serjeant, is chosen Speaker, and is to be presented to the King. Sir Edward Coke is of the House, and the first day set them straight in a business wherein they were going awry.

The blow to hopes of the Spanish alliance shook James from the position he had taken with the preceding Parliament. In opening the new session he asked the Houses for their 'good and sound advice.' Parliament no longer felt the old fervor over the sad plight of the Palatinate. Seeing the passing of the dark cloud of the proposed Spanish marriage, which had so long overcast the English spirit, it wished to strike a blow direct at the old enemy. The resentment of Buckingham faced him, too, that way; and helped by the smarting Charles, he became overbearing with the King, who wanted the restoration of the Palatinate to his daughter and his son-in-law and at the same time wanted to avoid war with Spain. To help procure a vote of funds the Duke succeeded in bringing James to consent to supervision by Parliament of payments to be made from monies voted.

Buckingham domineeringly pressed the King for a complete break with Spain, and set about the removal of its last opponent at Court, Lionel Cranfield, the Lord Treasurer, who had become the Earl of Middlesex. The Treasurer had been lax enough to lay himself open. Coke entered into the matter. In the case of Bacon the Commons had sent the complaints

privately made to the Lords for their investigation; for Middlesex they revived the old formal proceeding of impeachment. When Buckingham told the King of the attack prepared against the Treasurer, James said, 'You are a fool. You are making a rod with which you will be scourged yourself'; and to Charles, 'You will live to have your bellyful of impeachments.' Coke and Sir Edward Sandys for the Commons laid the charges before the Lords. In the absence of Buckingham because of serious illness, Charles exerted himself, and in the end, May 13, 1624, the Lords found Middlesex guilty. Though his imprisonment was not long and the King reduced his fine, he never regained influence.

Buckingham, bringing forward the proposal of a French marriage, dulled his new luster of popularity; but the match was less distasteful to England than the Spanish project, and he, James, and Charles all assured Parliament that no treaty would provide protection for Catholics. So the Commons voted a supply of 300,000*l.* for specified objects, and Parliament kept control of the funds. It had no desire to send any large English force into the heart of Europe, but wanted a war with Spain by sea, which it hoped would be a revival of Elizabethan maritime glories and largely self-supporting.

On May 29, 1624, Parliament was prorogued to November 2, but its reassembling was subsequently twice postponed.

Pursuant to the policy on which the subsidy was granted, a treaty was made with the Dutch and a force of some six thousand English volunteers provided for them.

On November 10, 1624, the treaty for the marriage of Charles and Henrietta Maria was signed subject to the ratification of James and to the Papal dispensation. Though the treaty itself made no provision for favor to English Catholics, a secret agreement engaged for toleration, and on this Richelieu obtained the dispensation. On December 12, 1624, the treaty was ratified; December 24, the recusancy laws were suspended; and December 26, the Lord Keeper was ordered to release all who were imprisoned for religion.

Mansfeld came to England, and twelve thousand Englishmen, pressed into service, were entrusted to his command and finally landed at Flushing with uncertain further destination.

James died March 24, 1625.

XVI

SINCE the state policy was already in fact in the hands of Buckingham and Charles, the death of James merely removed one whom they had been obliged to manage; but it had terminated the adjourned session, and Charles promptly had writs sent for a new Parliament which he hoped would supply funds to carry out an extensive programme. Buckingham, hoping to assure from the French marriage some of the desired political advantages, in spite of the fact that the wary Richelieu had evaded promising them in completing the marriage contract, betook his magnificence to France on the errand of bringing home Charles's bride; and there he indulged in the flourish of gallantry toward the French Queen, Anne of Austria, that provided a theme for the romancer of future generations, but raised a permanent obstacle in the path of diplomacy with France. Without accomplishing anything of English advantage in foreign affairs, he escorted to Charles his youthful Queen, Henrietta Maria, who, with her French retinue, was to provide him with much vexation at home.

Though the plague had broken out in London, nevertheless there was competition all over England for seats in the Commons by those who were eager to watch and to take a part in forthcoming events. Coke was returned and sat for Coventry. Sir Thomas Crew was again the Speaker. The Houses assembled June 18, 1625. Charles asked for a vote of supply, but failed to disclose his programme, and the Commons had no willingness to give up the control they had secured in the preceding Parliament. While waiting for enlightenment they prepared a petition for the execution of the recusancy laws, and in the absence of information voted a supply of 140,000*l.*, which was barely two per cent of the sum Charles and Buckingham really needed. The Commons gave further evidence of their intention of keeping control by their action on tonnage and poundage, the customs duties which since Henry VI had been granted at the beginning of each reign for the life of the sovereign. They voted them to Charles for only one year, and that grant in the pressure of events was lost without passage by the Lords. The Commons even began to debate the question of the impositions.

Buckingham, who had made heavy commitments abroad,

decided, still without a disclosure of plans, to ask for a further supply; but, though a thinly attended session was taken by surprise, he failed of success, and on July 1, 1625, the Parliament was adjourned to August 1, and, because of the plague, to meet then at Oxford. To induce a mood to vote a supply when they reconvened, Charles promised them that he would put the penal laws against Catholics in execution. But just before making this announcement, hoping to placate the French, with whom in their turn he was breaking faith, he gave orders that all imprisoned priests were to be released and permitted to go to France with the returning French ambassadors.

When the Houses assembled at Oxford, August 1, 1625, Coke promptly moved for an accounting for the funds which the previous Parliament had voted and put under the control of its Commission. Disturbed by Charles's pardon of the priests, the Commons resolved on a new petition to the King in the matter of recusants, and went on to discuss the appearance of new opinions, the Laudian trend, in the English Church. Quoting Tacitus on the defeat of the Britons due to their lack of unity, Coke warned his contemporary Britons against division in religion.

The Crown continued to refrain from disclosing its plans, and the Commons likewise refrained from voting a supply without information on its proposed use. They were suspicious of Buckingham, and felt, and finally some of them expressed their belief, that his large manner overlay a small capacity for important affairs. Hoping to soften their obdurate mood, Buckingham, answering on behalf of the King their recent petition on religion, promised all they had asked for in the execution of the recusancy laws, a promise subsequently fulfilled; and to cover the breach of the secret engagement with France set up the defense with the French Ministers that Louis and Richelieu had understood that the engagement was not to be taken seriously, and had gotten it merely as an expedient to procure the dispensation from the Pope.

Obtaining what they had asked for in recusancy matters did not remove the unwillingness of the Commons to trust Buckingham's management of foreign affairs. So in this contest over a personality, almost unaware themselves of whither

they were tending, they developed the broad constitutional question whether the Ministers of the Crown should be responsible to the King or to Parliament. The immediate phase ended when, with the Commons making a protestation of loyalty but without vote of supply, Charles brought his first Parliament to an end August 11, 1625.

Though Buckingham had so far gained little of political advantage for England from the French marriage, he had obtained a promise of some French money as a dowry with the Queen, and this, beginning to come in, together with the proceeds of a loan on the Privy Seal, supplied the Crown for a time. There was to be a new and more glorious Cadiz expedition, and the fleet was furnished forth under the command of Sir Edward Cecil, grandson of old Burghley and nephew of Burghley's son, Robert Cecil, Earl of Salisbury, with the Earl of Essex, son of the Essex of the Elizabethan Cadiz expedition, as the second in command. They captured Puntal, but they failed at Cadiz and missed the Spanish ships from Mexico, which they had hoped would replenish the English Treasury, and brought back the fleet crumbling from its own rotten equipment and the sailors foul with disease from rotten food.

Buckingham was eager for glories other than those of a courtier, and sought to utilize the position to which he had gained, from that of Favorite, of commanding the mind of the Prince he had trained, to attain achievement in affairs which would afford him a more substantial self-approval and a true respect from his fellows; but, whatever his natural endowment, his training was insufficient, the basis of his success in the necessity of men desiring preferment to seek his favor did not exist when he dealt abroad, and the swiftness of his rise, making him think that all things were easy to him, had left him without a proper judgment. So, contemptuous of those who would warn him, he swept them out of the way and plunged ahead.

Since John Williams, the Lord Keeper, had been steadily critical of Buckingham's plans, and James, in fact, had indicated to Williams, especially in view of his lack of a law training, that his appointment should be considered as a probation for three years, Charles, at the instance of Buckingham, told Williams that his resignation would be desirable, and he sur-

rendered his office. Charles appointed as Lord Keeper Sir Thomas Coventry, bringing the office back to a lawyer of attainment, of whom Bacon had written nine years earlier that 'he hath been, as it were, bred by Lord Coke and seasoned in his ways.' Although Coventry strongly favored the prerogative, Coke trusted him, liked him well, and had named him, with Sir John Walter already mentioned, and Sir Randall Crew, one of the executors of his will, which he had drawn two years earlier.

XVII

BEFORE the collapse of the Cadiz expedition, when the capture of Spanish treasure and the glory of a success was still hoped for to hearten Englishmen and convince them that they could trust the leadership of a Buckingham, the Court resolved on a new trial of a Parliament — a Parliament, however, in which there should be no place for leaders critical of the Buckingham policies, any more than there was a place in the Council for those who ventured in any way to advise against them.

Since the King and Buckingham could not safely remove a member from the Commons for his opinions expressed within the liberties of debate, as they could by some means remove a Crown officer, Parliament must be purged in its making. So Buckingham marked the names of Coke, Seymour, Phelips, Wentworth, and Alford, all leaders in the opposition to him in the preceding Parliament, and the King pricked them for sheriffs of their respective counties; Coke by reason of his residence at Stoke, for Buckinghamshire. Then, on December 16, 1625, the new Lord Keeper Coventry was ordered to issue the writs calling the Parliament. In spite of the shrievalty, Coke was returned and struggled to be able to take his seat.

Though he had at various times administered the sheriff's oath to others, he raised an objection against taking it himself on the ground that the form contained the obsolete promise to suppress all Lollardies, which, as he said, was but another name for the Protestantism that had become the established religion. Coventry submitted the question to the judges, who resolved that the matter to which Coke objected should be stricken out of the form, and the Council by so ordering removed the only valid objection he could make to assuming the

office. Since a sheriff must remain continuously in his county, Coke could not attend the sessions of the House at Westminster.

His endeavor to avoid the shrievalty may not have been due entirely to his desire to take his part with the Commons at Westminster. Though the office of sheriff was one of dignity, the honor was not so great as to appeal strongly to a man who had been Chief Justice of the King's Bench and a member of the Privy Council, which issued its orders to all the sheriffs of the realm.

The dignity was costly, and many men to whom the honor would make a far stronger appeal sought to avoid it. The sheriff was a dispenser of hospitality for the county to both extremes of society: his enforced guests, to be sure, were not a personal charge, but he had to pay all the rest of his customarily lavish and extensive entertaining out of his own pocket. The office demanded a retinue of liveried retainers and servants, perhaps running to some fifty in number, mostly, at least, paid from the holder's own funds. If the King passed through his county, the sheriff had to provide hospitality. He must personally entertain the Judges of Assize and their train on the circuit; and they expected to be well fed with such ostentation as would properly set forth their great importance. It was no politician's profitable position; on the contrary, the sheriff paid substantial fees to the Crown on his entry, on his semiannual accountings, and on his surrendering office.

And Coke was not feeling wealthy at this time. Just what his immediate difficulties were does not appear, but there are several suggestions that, however land rich he was, ready cash was not abundant. The situation had worried him so greatly that his distress over it had been obvious to those with whom he came in contact, as appears from a letter Chamberlain had two years earlier written to Carlton, March 8, 1632, in which he said:

There is doubtful speech abroad that Sir Edward Coke should be cracked, his brains being overburdened with a surcharge of his children's debts, which arise to £26,000, besides £10,000 of his own. But this is only whispered as yet, and I hope may prove false.

So Coke passed the year of the second Parliament of

Charles, during which he often must have longed to be taking part in its proceedings, in diligent pursuit of his duties as sheriff. He attended the monthly county court, he entertained the Justices of Assize on their semiannual visits, empanelled the juries, and fulfilled all the other still familiar duties of the office. As a fiscal officer of the Crown he collected certain forms of taxes and made his accountings to the Exchequer.

Though the old lawyer was not himself in the Parliament, his fighting son Clem was there; and Sir John Eliot, from whom trouble was not expected by the Court, for at the Oxford session he had spoken his belief in Buckingham's personal integrity. But, as Vice-Admiral of Devon, Eliot had seen the survivors of the recent attack on Spain starving and freezing after their return; and at the opening of the session asked for an inquiry into the cause of the failure of the Cadiz expedition, to which, when the Commons sought it, the Crown refused to respond. Then Clem Coke flung into the debate in aspersions of the Buckingham programme the phrase, 'It is better to die by the enemy than to suffer at home'; and, though he had to make some explanation of his speech on the demand of Charles to the Commons, the challenge of the words struck the key for the session.

The old lawyer was kept perforce in his county. But Eliot was in the Commons with the rich coinage of his speech in accusation against Buckingham ringing truth in its utterance. And when question arose if the Commons had the right to lay charges before the Lords when no person had petitioned with direct accusation of wrongdoing, as in the cases of Bacon and Middlesex, Selden was there to point out that unless they had the right it might be 'that no great person shall for fear of danger be accused by any man.' So they prepared the charges against the Duke that they were to place before the Lords.

About a year earlier, John Digby, Earl of Bristol, returned from Madrid, knowing more about the courses of Charles and Buckingham there than they cared to have disclosed; and the Duke had persuaded James to order Bristol to remain in his country place of Sherborne — Raleigh's place which Digby had purchased on Somerset's fall. Digby asked that if there were any charges against him he might be put on trial in the Lords; but Buckingham had been influential enough to keep

him away from London. After the death of James, Charles had commanded Bristol to remain away from the first Parliament of the new reign, and had not subsequently released him from his restraint. When Bristol received no writ for the second Parliament, he petitioned the Lords that he might either be brought to trial or restored to his rights. Then, on the representations of the Lords, Charles had a writ issued summoning Bristol to Parliament, but had it accompanied with a letter indicating that nevertheless he should not appear. Saying that the writ under the Great Seal had a more commanding force than a letter simply signed by the Lord Keeper, Bristol calmly came to London and took his seat, where, in spite of repeated interference from Charles, he pressed accusation against Buckingham. At this point the Commons came before the Lords with their impeachment of the Duke, who had to meet the double attack.

Edward Herbert, Selden, Pym, and the others for the Commons presented their charges against Buckingham. Eliot splendidly summarized, and made the ringing demand, quoted from the case of the Bishop of Ely in the time of Richard I, '*Per totam insulam publice proclametur; pereat qui perdere cuncta festinat; opprimatur ne omnes opprimat.*'

The angry King sent Eliot and Sir Dudley Digges to the Tower; the Commons cried, 'No business till we are righted of our liberties,' and on the release of Digges and Eliot boldly declared the illegality of tonnage and poundage which Charles had collected without grant from them. In the face of this, Charles had Buckingham elected Chancellor of Cambridge, and the Commons, without waiting the conclusion of the impeachment, prepared a remonstrance, in which they declared they believed Buckingham to be an enemy to the Church and State, and prayed the King to remove the Duke from his counsels. Whereupon, June 16, 1626, Charles dissolved his second Parliament.

At quiet Stoke Poges the old lawyer received the news of these stirring events. A sheriff could not legally serve for more than one year.

To vindicate Buckingham against the accusations left dangling by the dissolution, the Government directed the managers whom the Commons had appointed for the impeach-

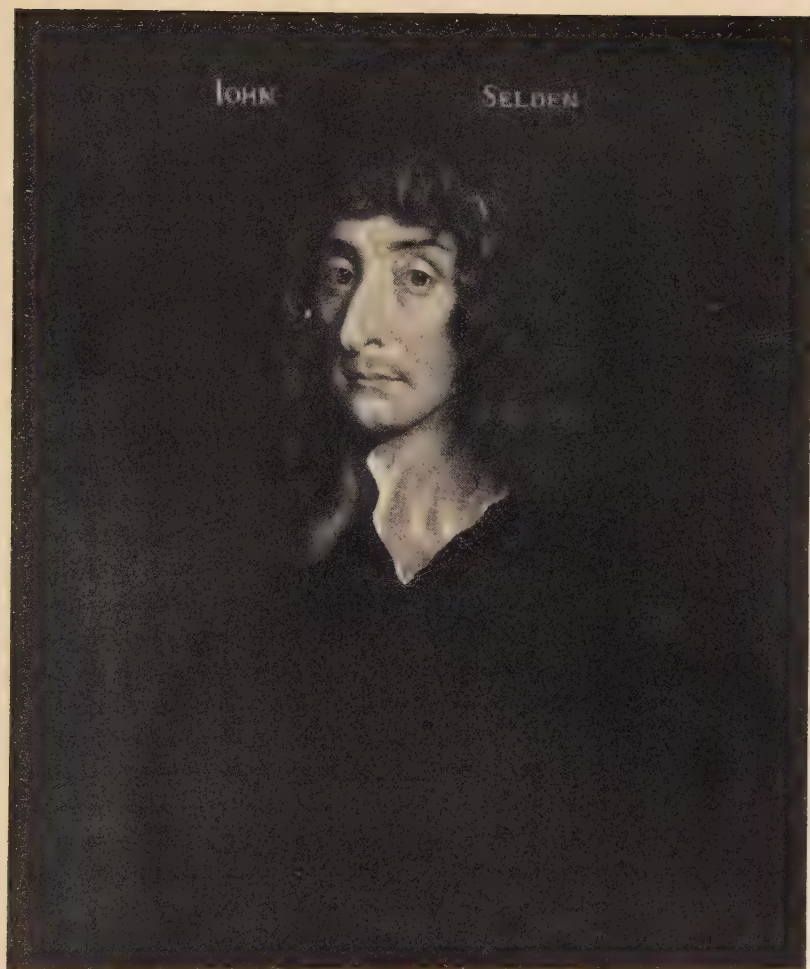
ment to bring the charges in the Star Chamber. This, however, they refused to do on the ground that they had authority only for the Parliamentary proceeding. Nevertheless, the charges were otherwise laid before that Court, which was the Council, with the addition of several judges acting in a judicial capacity; and as the Council at this time was virtually Buckingham, the Court naturally exonerated the Duke.

Charles and Henrietta quarreled miserably. Her marriage had not proved the protection to the Catholics in England, cherished in her girlish imagination, which she had a right to expect from the secret agreement; and her French household helped keep the quarrel alive. Finally, Charles, in contravention of the marriage treaty, expelled from England the Queen's French *entourage*, except a few close personal attendants, and thereby evoked the resentment of Louis.

XVIII

AFFAIRS on the Continent went badly. Charles levied ships from the maritime counties and began to capture French prizes. Their sale substantially assisted the British Treasury. When Buckingham announced that he would himself negotiate with the French King, Louis let it be known that the Duke would not be *persona grata*. The irritation of Charles and Buckingham against France began to erase from their consciousness the smart they had suffered in Madrid; and they began to imagine the possibility of bringing the German war to an end so that they might give their entire attention and resources to an attack on France.

Money from the French prizes helped equip the expedition against Rhé, the island opposite La Rochelle. No less than Buckingham went in command, seeking glory and believing that his presence would assure success. Indeed, he displayed conspicuous and gallant personal bravery and other qualities of leadership, except those of organization and strategy. The fleet sailed June 11, 1627, with a force of over six thousand. They were badly beaten; and just four months later, on November 11, 1627, landed back in England, less than three thousand in number, suffering from hunger and disease. Once more Buckingham was denied the striking success with which he hoped to rally Englishmen to the side of himself and the King.



JOHN SELDEN
National Portrait Gallery, London

In raising its levies, the Government had billeted soldiers in private houses throughout the country, and had failed to provide payment for their board and lodging. Many of the troops were Irish, not assimilating readily with those on whom they were quartered. Others were pressed from the dregs of the English population. They were often violently abusive to their enforced hosts. The whole matter aroused bitter resentment throughout the land.

With soldiers and vagabonds wandering about the country, the constituted authorities were unable to maintain the peace, and the Government appointed a provost marshal for every shire. When fifty Essex men refused to take press money, it was suggested in the Council that they should be hanged by martial law. But when Coventry pointed out that they were not soldiers, and therefore not subject to military law until they had taken the money, the proposal for hanging was dropped. Apparently the provost marshals did not always so nicely distinguish the limits of their jurisdiction, and the operation of military law became a grievance to the country.

After the Parliament had been dissolved with a failure of supply, the Crown lawyers expressed an opinion that the King had a right to levy tonnage and poundage without Parliamentary grant, and Charles continued to do so. He made an appeal to the country for a gift in lieu of the subsidies the Parliament had failed to vote. But for the protest of the City, he would have undone the work of Elizabeth and Gresham and debased the coinage. Indeed, debased coins were minted and uttered; subsequently, however, a proclamation declared that they should pass only for the bullion value. He sold some of the royal plate. He tried to put the Crown jewels in pawn. When the appeal for a national gift met with an unfavorable response, he turned to a loan; required that any one refusing to lend must swear whether or not some one had prompted the refusal; and if the recalcitrant declined to swear, he was to be bound over to the Privy Council for contempt.

Though the judges paid their quotas, they refused to sign a consent on the ground that it might be construable into an approval of the legality of the proceeding. The King sent for Sir Randolph Crew, who had been designated Chief Justice of the King's Bench on the appointment, December 20, 1624, of Sir

James Ley to the Treasurership, which had till then been in commission since the impeachment of Middlesex. Crew had his friend Coke's firm integrity for the honor of the law, and when requested by Charles to sign persisted in his refusal. The King instantly dismissed him from his judgeship as an example. The other judges, however, still stoutly refused to sign unless permitted to add that their signatures were simply to please the King and not to be taken as an approval of the legality of the loan. Charles appointed Nicholas Hardy, who had prepared the defense for Buckingham on the impeachment, successor to Crew as Chief Justice.

The news of the stand of the judges stiffened the resistance to the loan, and the Government, increasing the pressure, had many gentlemen throughout the realm imprisoned, among them John Hampden, Sir John Eliot, and Sir Thomas Wentworth. Less important men found themselves pressed into the army and sent to serve abroad. Finally, five of those imprisoned appealed to the Court of King's Bench for writ of habeas corpus. Branston, Noy, Selden, and Colthorp represented them; and when the matter came to a hearing November 22, 1627, their arguments, as the Reverend Joseph Mead wrote, met 'with wonderful applause even of shouting and clapping of hands, which is unusual in that place.'

Counsel for the Crown contended for the King's right to imprison without showing cause on the ground that sometimes exigencies of state policy demanded it, and, more strongly pressed, that the publicity of showing cause would often defeat the searching out of wrongdoers in conspiracy and other cases. Attorney-General Sir Robert Heath instanced a ruling of Sir Edmund Anderson when Chief Justice of the Common Pleas, to the effect that the King was not bound in all cases to show cause. The name of Anderson carried weight. Though the Court declined to admit the prisoners to immediate bail, it refrained from ruling that the King had power to imprison permanently without showing cause.

In spite of the resistance, the loan brought in 236,000*l.*, which was within 52,000*l.* of the sum expected from it. The King raised 263,000*l.* on mortgage of Crown lands.

But all the funds the Crown could provide in these ways were not enough for the continuance of a war in Europe. Unless

that were abandoned, there must be a Parliamentary grant; and Buckingham, intent on vindicating his powers in a Continental struggle, ever confident of his strength in the domestic storm, urged Charles to assemble the Houses. Members of the Court assured the King that there would be no attempt to renew the impeachment proceedings against Buckingham; and January 30, 1628, Charles ordered the issue of the writs for a new Parliament. The elections went heavily against the Crown. The fact that a candidate had refused payment of the loan proved a barance of a seat. Both Buckinghamshire and Suffolk returned Coke, and he chose to sit for his home county of Bucks.

XIX

FAMILY trouble still pursued Coke, and the heart of the old lawyer must often have been troubled. This narrative left his daughter Frances, after her marriage to John Villiers, created Viscount Purbeck, attending her mother's entertainments. But the daughter was growing up, maturing rapidly in marriage, and did not find the husband, into whose arms she had been thrust, a man to her liking. Chamberlain's letter to Carlton of July 17, 1617, already quoted from, written when Lady Hatton was struggling against the Villiers match, ended with 'But if it be as is said, both mother and daughter are far enough from it [the marriage] and have another aim at a younger son of the Lord Treasurer's.

Even then the unfolding loveliness of the child Frances Coke, inheritor of her mother's beauty, apparently had attracted the attention of Sir Robert Howard, son of the Earl and Countess of Suffolk, and brother of that Frances who was the Countess of Somerset. In the constant social activity Lady Hatton was engaged in with her daughter, this man had abundant opportunity to see the young woman; and gossip began to couple their names. Viscount Purbeck went abroad in 1620, and Camden indicates that he then already showed signs of the mental disease which came to afflict him in addition to his physical disorders. Later his insanity became so pronounced that he had to be put under restraint.

In the mean time, the affair of Frances and Robert Howard flamed out; there was scandal, an elopement, and the hand of

society laid on them to bring them back. In the letter-writing of the times a glimpse is given of Frances sick with a touch of smallpox, and her husband, whom society thought a fool in his insanity for sticking by his wife during the Howard affair, staying by her bedside through her illness. Frances had a child to whom, though Purbeck acknowledged it as legitimate, scandal imputed the parenthood of Howard. Let Chamberlain continue the story with his letter to Carlton of February 12, 1625:

I doubt not but you have heard of the Lady Purbeck and her fair issue; which business hath exercised this whole town now a good while, and will pose all that deal in it, if she stick well to her tackling, and maintain her ground that it is her husband's, specially if he continue to avow it, as they say he doth. There be many passages too long to recite, but this must not be omitted that the Lady Suffolk gives out her son Robert, the reputed father, to be insufficient, and so not liable to such a scandal. [Repetition is easier than origination. This plea was a leaf out of the old book of the divorce of her daughter from Essex, used in defense instead of attack.] The young lady is kept somewhat straitly, so that none of her friends or acquaintances come near her: yet she carries herself with such resolution, that she shows herself to be her mother's own daughter.

As a result of the scandal, Frances and Robert Howard were committed to custody. She was by this time in her early twenties, no longer the bewildered and helpless child fought over by father and mother; but spirited as her mother, saucy and somewhat hard, she had already suffered the worst of scandal, and therefore was not fearful of what it could do further. Her trouble came near to bringing her father and mother together again. All this Chamberlain shows in his letter to Carlton of February 26, 1625:

The Lady Purbeck, with her young son, and Sir Robert Howard, are committed to the custody of several Aldermen, Barkham and Freeman, to be close kept. When she was carried to Serjeants' Inn to be examined by the new lord chief justice and others, she said she marveled what those poor old cuckolds had to say to her. There is an imputation laid on her that with powder and potions she did intoxicate her husband's brains, and practiced somewhat, in that kind, upon the Duke of Buckingham. This they say is confessed by one Lambe, a notorious old rascal that was condemned the last summer at the King's Bench for a rape and arraigned some year or two before at Worcester, for bewitching my

Lord Windsor's ... I see not what the fellow can gain by his confession, but to be hanged the sooner. Would you think the Lady Hatton's stomach would stoop to go seek her Lord Coke at Stoke for his counsel and assistance in this business?

The story continues in a letter of Chamberlain to Carlton
March 12, 1625:

The Lady Purbeck's business is come to this pass, that all matters of sorcery, witchcraft and the like, being let fall, she is only prosecuted for incontinency in the spiritual court of High Commission, where she hath taken her oath to answer certain articles. But Sir Robert Howard would by no means be induced to swear: whereupon, he was committed close prisoner to the Fleet. On Thursday they were both convented again before the commissioners at Lambeth, where Sir Robert persisted in his former resolution, and withal claimed the privilege of a Parliament man, which, I think was yielded to. She was willing to put in bail or go to prison, for that Alderman Barkham desired to be rid of his charge. She answered, that, if he were weary of her, she was not weary of him, where she found so good using. But for putting in of bail, she said she knew not how to do it, her friends having so forsaken her that she doubted whether they would do it. Then she desired she might have counsel, which being granted, she required the Lord of Buckingham would give her money to fee them; for she had nothing, nor knew where to have any. This was the sum of what passed then, and they were to appear there again this day. I doubt she hath a hard task in hand, and that she will find sumum sus, though they give her good words to draw her to conformity.

Chamberlain continues further in his letter to Carlton
March 23, 1625:

The Lady Purbeck's business possesseth the high commission very much every week, wherein she acquits herself reasonably well hitherto. On Thursday last, one Bembridge, a servant of the Lord of Canterbury's was committed for speaking in her behalf and how hardly she was used to one of her adverse proctors, who, complaining presently, he was sent away, and she called him one of her martyrs. Sir Robert Howard was excommunicated openly at Paul's Cross on Sunday last, for contempt in refusing to answer. The Earl of Anglesea [brother-in-law of the Lady Purbeck] is become the prosecutor of this case, and all goes now in his name.

A few months before Coke's election to the Parliament of 1628, the proceedings against his daughter Frances for her intimacy with Sir Robert Howard came to a final hearing before

the Ecclesiastical Court of High Commission. Let the Reverend Joseph Mead, whose reverence did not omit the picturesque details, tell the story:

Yesterday being Thursday, was my Lady Purbeck's case heard at large in the high commission which lasted from two o'clock till after eight. It was held in the Bishop of London's house, and some extraordinary commissioners joined with them, viz., my lord keeper, my lord president, lord steward and lord chamberlain. For the lady pleaded Dr. Guynn, Dr. Zouch; against her were Dr. Reeves, Dr. Duck, and Dr. Eden who urged strong presumptions as — 1. That she came to Dr. Lamb's chamber (Sir Robert Howard being there) in the habit of a maid servant, with a basket on her arm and provisions in it for their supper; that they were both together upon the bed; and that Lamb drew the curtain and locked them in. 2. That at Ware they lay in the same inn, and had their chamber near together. 3. That Sir Robert Howard came often unto her at evenings, crossing the water to York House, there being a private and secret passage to her chamber: and that he was seen often coming away very timely in the morning. The answer was that those accused her were her sworn enemies, and such as had threatened her a mischief. That the former lord keeper had urged some against their consciences to accuse her, threatening them otherwise to be in chains all their days. In fine, Sir Henry Martin gave sentence and upon the fore-named presumptions and allegations pronounced her guilty of adultery and therefore condemned her to do penance in a white sheet in the Savoy, to pay the Court five hundred marks, and to be imprisoned during the pleasure of the Court. To which it is like the rest agree, my author coming away before all had spoken.

His Reverence wrote further on January 12, 1628:

In the last week's news it is said, moreover, that my Lady Purbeck, being hotly pursued to do penance was rescued from the officers by the Savoy Ambassador, her next neighbors, and has escaped their clutches; [and on February 3, 1628]: One of my Lady Purbeck's gentlewomen, being asked where her lady was who is pursued to do penance, answered she knew not; except her ladyship was gone to the Isle of Rhé now called the Isle of Rue; for which untoward speech she is laid by the heels.

It did not pay to be witty on some themes.

XX

THE day of the Parliament of 1628 grew near. Leaders began to see that the struggle must go beyond the Ministers to the

King himself. In caucus a few days before the opening of the session, they came to the conclusion that the case against Buckingham was not to be reopened; and Coke, Phelips, Wentworth, and Selden agreed that they would go directly to the point of the King's invasion of the rights of his subjects.

Parliament met March 17. After Laud had preached the sermon on 'the unity of the spirit in the bond of peace,' Charles clearly indicated what unity of the spirit they were to keep by telling them that if they failed to do their duty he must use such other means as God had put into his hands; and this statement, he said, they were not to take as a threat, for he scorned to threaten any but his equals. The Commons elected for their Speaker Sir John Finch, then Recorder of Canterbury, on his way to become Chief Justice of the Common Pleas in 1634, and Lord Keeper in 1640.

In the Lords, Sir Thomas Coventry sat on the Woolsack. Some seats in the Upper House were conspicuously vacant. Abbot, Archbishop of Canterbury, had been ordered into confinement and suspended from his duties for refusing to license the printing of a sermon of Dr. Robert Sibthorp, which declared it was the duty of the Prince to direct and make laws. Williams, on his resignation as Lord Keeper, had been banished to his diocese of Lincoln. Theophilus Clinton, Earl of Lincoln, had been sent to the Tower for refusing payment of the forced loan. Thomas Howard, Earl of Arundel, who had been in opposition to the Government policy of war, had been sent, first to the Tower, and later to the confinement of his country seat, ostensibly for his connivance at the marriage of his son with Elizabeth Stuart, sister of the Duke of Lennox, a lady whom Charles desired to have bestowed elsewhere. John Digby, Earl of Bristol, had been summoned before the Star Chamber to answer charges against him countering his attack on Buckingham; had said he was ready to produce the private correspondence on the journey of the Duke and Charles to Madrid; and the intervention of his serious illness had agreeably released the embarrassed Court from pressing the prosecution. On inquiry from the Lords, however, all of these men were allowed to come to the Parliament.

The Commons presented an imposing array. A letter of the times, dated March 21, 1628, remarked:

The house of commons was both yesterday and to-day as full as one could sit by another. And they say it is the most noble, magnanimous assembly that ever these walls contained; and I heard a lord estimate they were able to buy the upper house (his Majesty only excepted) thrice over, notwithstanding there be of lords temporal to the number of 118. And what lord of England would be followed by so many freeholders as some of these are?

Almost at once their spirit began to appear. Proposing a general fast, Sir Robert Phelips said that after the former general fast it pleased God to deliver us from the Plague; but now for our sins, there being so many plagues of the Commonwealth about His Majesty's person, we never had more need of such humiliation than now. Coke also advocated a fast 'because there are, I fear, some devils that will not be cast out but by fasting and prayer.' He was not, however, a man to rely on faith without works; and there was lawyer's work to be done. The very next day, March 21, 1628, he presented a bill providing that no man for any cause or crime should be held in prison more than three months without trial or release; that he should be called to answer within two months, and if he were not admitted to bail within a month further, he should be released on habeas corpus as a matter of course. And the old lawyer was already at work on a more comprehensive measure on the grievances of the people.

Wentworth and Eliot taking the lead, the debate went on; and the Commons made clear their intention that the abuses should receive correction before they would grant a supply, but agreed that they would consider the two questions together. In the habeas corpus discussion, the Solicitor-General, Sir Richard Chilton, said that he had not been present when the case had been argued in the King's Bench, but that he would take the matter up with the Attorney-General, Sir Robert Heath, who had argued the case for the Crown.

Coke answered that he should be glad to know what the Attorney-General had to say, and would give him something to think about, namely, that whenever the old law books spoke of imprisoning a man, they meant on the order of the judges. 'The King can arrest no man, because there is no remedy against him. I have given you a preparative for the Attorney-General, but I have more physic in store for him.'

When later, however, March 29, 1628, Chilton cited not only the opinion of former Chief Justice Anderson which Heath had used in the King's Bench proceedings, but also quoted a resolution of the King's Bench in 1615 in which Coke himself had joined in an opinion that the Council could imprison without disclosing cause, Coke, taken by surprise, floundered and went far astray in talking of the exigencies of the Gunpowder Plot, the participants in which had been executed nine years before the date of the resolution in question.

Coke, two days later, March 31, 1628, entirely over his confusion, rose, and laying aside all petty pride of lawyer's learning, said that with larger knowledge his views had changed from those he had expressed in 1615. He had seen members of Parliament imprisoned without accusation, and had himself been sent to the Tower without charges made; and further, he did not believe that the words Anderson had actually used would bear out the construction placed on them in the note Heath had cited before the judges in the King's Bench.

When Coke sat down, Eliot rose and spoke the words of gratitude to him for his service that set forth the enduring place of the great lawyer in the life of all peoples who enjoy the liberties guaranteed under an inheritance of the English law: 'I cannot think of flattery, but we may here thank him now whom posterity will hereafter commend.'

The very next day, Eliot was able to place before a committee of the Lower House the full opinion of Anderson written in his own hand in a book which his heirs had cherished and sent at this juncture to Coke's fellow patriot. Though the opinion was not sweeping, it favored the contention of the lawyer leaders of the Commons rather than that of the lawyers for the Crown. Coke exclaimed when he saw it, 'Of my own knowledge, this book was written with my Lord Anderson's own hand. It is no flying report of a young student. I was solicitor then.... Let us draw towards a conclusion. The question is whether a freeman can be imprisoned by the King without setting down the cause? I leave as bare as Æsop's crow they that argue for it.' The Commons apparently thought so, for they at once resolved that no freeman might be committed without cause shown; that every one however committed, had a right of habeas corpus; and that, if no legal

cause of imprisonment appeared, he was to be bailed or released.

The Commons had earlier adopted a resolution against illegal taxations, which had given them less trouble. They arranged for a conference with the Lords on the two resolutions; and as an evidence of good faith with Charles they voted five subsidies conditional on the King's giving satisfaction on the rights of the subjects, with a proviso that they would not report the vote to the Lords until this condition were fulfilled.

On Monday, April 7, 1628, Coke, Sir Dudley Digges, Selden, and a Mr. Littleton, as a Committee of the Commons, reported to a Committee of the Lords the conclusions of the Lower House. Coke closed the presentation for the Commons, and at the end of his address turned to the Bishops with a quotation of the words of Festus to Agrippa, Acts XXV, 27: 'For it seemeth to me unreasonable to send a prisoner, and not withal to signify the crimes laid against him.'

Financial exigencies pressed the King, who, at the late hour of April 10, 1628, the day before Good Friday, sent word to Parliament that it should take no Easter recess; but some hundred members had already departed for their holiday, and the Commons, though acceding to the King's message '*salvatis semper privilegiis*,' as not being obliged like the Lords to adjourn at the King's command, nevertheless declined to consider supply until the return of the absent members, and went on discussing such matters as billeting and martial law, which was not at all what Charles wanted.

When the Lord's Committee for the conference which had taken place reported back on Saturday, Attorney-General Heath had an opportunity to present the Crown argument on habeas corpus to the whole House, which thereupon desired to hear the judges of the King's Bench. When the judges appeared, they were non-committal, saying that they had not given final judgment, and that the prisoners, if they had wished, might have applied for habeas corpus again the next day. Though the Crown party in the Lords pressed for a conclusion in that House without further parley with the Commons, on request from the Lower House, which feared that matters were going against them in the Upper, not to decide

until hearing from them further, the Lords arranged another conference.

In connection with Heath's arguments before the Lords on the Saturday before Easter, an exchange of lawyer's compliments took place. As told in the words of Mead writing to Stuteville:

Mr. Attorney [Sir Robert Heath], as was told some of the commons, was pleased to slight their arguments and precedents, and to say they were but lamely excerpted out of the original records, and made more against the commons than for them; which, when Sir Edward Coke understood, he affirmed to the house upon his skill in law, that it lay not under Mr. Attorney's cap to answer any one of their arguments. Mr. Selden said he wrote out all the records with his own hand out of the Tower, the Exchequer, and the King's Bench; that they were truly and properly inferred; and that he would engage his head Mr. Attorney, in all these archives, should not find any more precedent of that subject. Mr. Littleton said the precedents were delivered unto him, and that he delivered them unto the lords and examined every one of them syllabim by the records; and that whoever said they were mutilated or imperfectly taken spoke falsely.

Since, on the message Charles had sent Friday, the Commons had not settled to the business he wanted done, on Saturday he sent another message bidding them take heed not to force him to make 'an displeasing end of that which hath been so happily begun.' On receiving this threat of dissolution the Commons sadly sat in silence which a comic interlude broke. Francis Nethersole, who was friendly to the Crown party, rose, as Mead relates, 'intreating license of the house that he might report his last night's dream with protestation he would truly deliver it. Whereat some laughing, he told them kingdoms had been saved by dreams, so they bade him go on.' And he told his dream, not, however, without an interruption from the Speaker; but the house wanted to hear the dream out.

Sir John Eliot thanked the speaker for interrupting the gentleman, saying it became not the gravity of that house to hear dreams told. Sir Edward Coke said that of dreams there were three kinds, prophetic, natural, and phantastical, and that this dream was of the third and last sort. Sir Thomas Wentworth said, he would let pass the dream, and speak to his Majesty's message, which he did.

The second appearance of the Lower House conferees before

the Committee of the Lords took place. As Mead reported to a correspondent:

On Wednesday afternoon there was a conference between the lords and commons for clearing the two first questions concerning persons and goods. Mr. Attorney pleaded for the King and Sir Edward Coke, Mr. Littleton, and Mr. Selden for the commons. Their first theme was the explanation of Magna Charta by seven acts of Parliament, where it was plainly demonstrated by Mr. Littleton that in the clause *nullus liber homo incarcerationem nisi per legem terrae* that *per legem terrae* was meant by way of process; which is a part of the common law; or by the judgment of a man's peers, and so not by an illegal or reasonless warrant. He answered all Mr. Attorney's exceptions so clearly as he replied not one word. Whereupon, Mr. Littleton craved judgment of the lords upon a *nihil dicet*.

Mr. Selden's theme being the application of his twelve precedents taken out of the records of the Tower, King's Bench and Exchequer, against Mr. Attorney's objections, he wiped them so clean away as Mr. Attorney had no more to say, but 'I refer myself to the judgment of the lords.'

Yesterday, also, they had another conference about the same subject, whereof, to omit other things, Sir Edward Coke framed an epilogue, directing his speech first to the Lords, calling to their remembrance how much noble blood had been anciently spent in defense of the subject's privilege contained in Magna Charta: yea, more blood, as one author saith, than runs in one time in all the veins of the Kingdom. Secondly, to the bishops, putting them in mind what dreadful courses, excommunications and anathemas, their predecessors did thunder out upon themselves and all their successors, as likewise upon the people and their posterity in case of the violation of that sacred charter. Thirdly, to the Judges, calling to mind their oath of giving sentence according to the law and the king's oath at his coronation of maintaining the laws.

So a week passed in deliberation. Then, as Mead continues the narrative:

On Monday April 21, the house, upon the report of the two conferences had with the lords on Thursday and Friday before, did fully and absolutely, by an universal consent of the whole house, without so much as one negative voice to the contrary, a second time conclude, that the subject ought to be imprisoned neither by the King nor the Lords, nor by any other authority without a legal cause alleged. 2. That no man's goods ought to be taken from him without his consent. Which unanimous act of theirs they signified to their lordships by message on Tuesday morning April 22, adding withal that though they were well persuaded of

their lordships' good inclinations to these propositions of theirs, yet they thought it fit to entreat their lordships that if any doubt or scruple did yet remain in any one of their lordships' minds, they would make it known in a conference, and the commons would give them full satisfaction.

The struggle thereupon shifted to the lords. In Mead's relation:

The message came to the Lords while they were in eager debate of the very same business, which continued from nine in the morning till six in the evening. Of the like tongue-combat was never heard in the upper house. It was performed by nine peers of the side that stood for freedom and by nine others of that party that to please one man labored might and main to make themselves and their posterity slaves. But to the end, that nothing might be binding or conclusive, they called my lord keeper off his wool-sack and converted the house into a grand committee.

On the free side, the Bishop of Lincoln used the greatest freedom, giving neither way nor respect to those of the opposite party, no, not to the Duke himself; the king only he mentioned with humble reverence. 'In brief, by his wisdom and courage,' saith mine author, 'he won that day immortal renown.' My lord Say did likewise rarely on that side. So did the Earl of Bristol. And when the ducal party would have metamorphosed the committee into a small House, to the end that they might have gone to voices, my Lord Say challenged that all of them that would so ignobly stand against the most legal and ancient liberty of the subject, should together with their name subscribe their reason to the vote, to remain upon record unto posterity; which motion daunted them all with a lively sense of their ignominy which should have been stamped upon their fame to all posterity. Had they proceeded then to votes, it is supposed the greater part would have exceeded the better by ten voices at least, that is to say, sixty-six to fifty-six.

Buckingham did not care to chance so close a majority.

XXI

THE outcome of the struggle in the Lords was the submission by them to the Commons of a counter-proposal. It declared that the Great Charter and the six statutes were in force, that every freeman had a fundamental property in his goods and a fundamental liberty of his person. It requested the King to confirm the ancient just privileges and rights of his subjects in as ample and beneficial a manner and as fully as their ances-

tors had enjoyed them under the best of His Majesty's most noble progenitors, and to promise that in all cases within the cognizance of the common law concerning the liberties of the subjects, His Majesty would proceed according to the laws established in this kingdom, and in no other manner or wise. The proposal continued:

And as touching his majesty's royal prerogative intrinsical to his sovereignty and entrusted him from God ad communem totius populi salutem, et non ad destructionem, that his majesty would resolve not to use or divert the same to the prejudice of any of his loyal people in the property of their goods or liberty of their person; and in case, for the security of his Majesty's Royal person, the common safety of his people, or the peaceable government of his kingdom, his Majesty shall find just cause, for reason of State, to imprison or restrain any man's persons, his Majesty would graciously declare that within a convenient time, he shall and will express the cause of the commitment or restraint, either general or special; and on a cause so expressed, will leave him immediately to be tried according to the common justice of the kingdom.

In this final saving clause, the Lords were feeling after that leeway for the public security which, in the course of time, the nation was to find in the suspension of the writ of habeas corpus on occasions of general danger. But the Commons were determined on a definite expression of the idea that there was a fundamental law to which the King was subject, and were also determined to include in that fundamental law certain things that should be beyond peradventure.

When the counter-proposal came to the Commons April 26, 1628, Coke savagely tore at it with a series of questions:

Is the confirmation of the Great Charter a matter of grace? What are just liberties? Who were the best of his Majesty's predecessors? We see what advantage they have that are learned in the law in penning articles above them that are not, how wise soever. What is intrinsical prerogative? It is a word we find not much in the law. Intrinsical prerogative is not bounded by any law, or by any law qualified. Admit this intrinsical prerogative, and all our laws are out. This intrinsical prerogative it appears is entrusted to the king by God. It is *jure divino*. No law can take it away. His majesty can commit when he pleases. King John strove in vain for this power.

And Selden, speaking after Coke, exclaimed, 'Convenient time! at this little gap every man's liberty may go out!'

On May 1, 1628, a message came from the King stating that he wished the question 'whether they would rest on his royal word and promise' to be put.

At the suggestion of Wentworth, the Commons prepared a remonstrance, stating that they trusted His Majesty's goodness, but were anxious that it should remain to posterity. When Charles heard the course affairs were taking, he sent a further message saying that he would not hear of any encroachment on the sovereignty or prerogative which God had put in his hands for the good of his people, and that the session must be brought to a close May 13. The Commons, nevertheless, went ahead and presented the remonstrance; and Charles answered that he would confirm Magna Charta and the six statutes, but without additions, paraphrases or explanations. Further than this, his royal word was enough.

When this answer from the King came to the Commons, Coke said:

We sit now in Parliament, and therefore must take his Majesty's word no otherwise than in a Parliamentary way; that is, of a matter agreed on by both Houses his Majesty sitting on his throne in his robes, with his crown on his head and sceptre in his hand, and in full parliament, viz., — both Houses being present, and such his royal word and assent being entered upon record, in perpetuam rei memoriam. This, [he said] was the royal word of a King in Parliament, and not a word delivered in a chamber or out of the mouth of a secretary or lord keeper at the second hand. Therefore, his motion was, that the House of Commons more majorum should draw a petition *de droict* to his Majesty; which, being confirmed by both Houses and assented unto by his Majesty, would be as firm an act as any.

Thereupon Coke proposed a petition of right.

So accordingly, on Thursday May 8th, at a conference between both Houses in the Painted Chamber, Sir Edward Coke, after his speech, presented the same petition to their lordships, consisting of four branches or heads. 1. The personal liberty of the subject. 2. His propriety in his goods. 3. Unbilleting of soldiers. And 4. Silencing of martial law in time of peace.

On May 10, 1628, the Committee of the Lords on the Petition of Right reported. It placed the matter of imprisonment before the House without recommendation, and expressed its approval of the rest of the petition.

Charles then wrote a letter to the Lords declaring that the good of the State required that he should have the right to imprison, and stating that he would undertake not to imprison for refusal to lend.

For eighteen days the Lords strove to find a formula that would protect the subject and still leave in the King's hands enough power of imprisonment to cover those emergencies which, when the sovereign power had definitely shifted from the Crown to Parliament, were to be cared for by a suspension of the writ of habeas corpus: but they could find no formula that would satisfy the Commons that it would not defeat the purposes of the petition in the form presented by the Lower House.

Events were bringing to bear on Charles arguments of such cogency that he could not disregard them. At this time he learned of two fresh disasters. On April 27, 1628, Tilly had forced the capitulation of Stade on the Elbe, which Christian of Denmark had held with four thousand English under the command of Sir Charles Morgan, of whom only sixteen hundred were left to march out of the town with the honors of war.

On the same day that Morgan marched out of Stade, William Fielding, Earl of Denbigh, had sailed with a fleet to force the sea defenses of La Rochelle and carry supplies to the starving Huguenots besieged there. The expedition, finding the French defenses too strong for attack, failed completely, and even suffered the ignominy of having three of its supply ships captured by privateers. It returned May 27, 1628, with leaking ships and sickened crews.

On that day of the return of the fleet, Charles had consulted the judges, who took the position that the King in his discretion could imprison without showing cause; and the judges in their discretion could delay the release for a reasonable time; and on the question whether if he assented to the petition the authority they allowed would be lost, they said the judges have the right to determine the meaning of a statute and he need not fear such a result.

Under the influence of Buckingham, however, and with the consent of the Council, the King, June 2, 1628, appeared before the Houses, and, not referring to the Petition of Right, re-

newed the old offer of his personal assurance that he would observe the law.

The members considered the Duke responsible for the refusal of the King to grant their petition, responsible, too, for the recent disasters on land and sea and all those that had preceded. The next day, before the Commons, Eliot poured out the long tale of these disasters and proposed a remonstrance. Charles, on the other hand, saw their cause, not in Buckingham, but in the failure of the Commons to grant adequate supply, and learning of the course of the debate, sent them first a message that the session would come to an end in a week, and followed it with another forbidding them to consider any new business that would require more than the allotted time, or lay any scandal or aspersion on the State, Government, or Ministers thereof.

The long strain of the struggle had stretched nerves close to the breaking point. In the discussion that followed the delivery of this message, Eliot was saying that there must have been misrepresentation to the King, as there had been no intention of casting any aspersions on the Ministers (who, in fact, though in the minds of every one, had not been mentioned), and was saying, 'I am confident no Minister how dear soever ——' when the Speaker, Sir John Finch, with tears in his eyes, rose and said, 'There is a command laid on me to interrupt any that should go about to lay any aspersions on the ministers of state.'

Eliot sat down. Throughout the hall the members, many with tears in their eyes, remained awhile in silence. Then man after man, endeavoring to resume the debate, was incoherent or unable to speak at all. Coke rose, with tears streaming down his cheeks, but, choked with his emotion, was unable to utter a word. Finally Finch asked permission to leave, and no one objecting, he went out. After he had gone, men recovered self-control enough to discuss the crisis. Coke rose again, and with precedent after precedent pointed out that great men, Privy Councillors, the King's prerogative itself, had formerly not been beyond the scope of Parliamentary inquiry; and undaunted by the King's command said:

Let us palliate no longer. If we do, God will not prosper us. I think the Duke of Buckingham is the cause of all our miseries, and

till the King be informed thereof, we shall never go on with honor or sit with honor here. That man is the grievance of grievances. Let us set down the cause of all our disasters and they will reflect on him.... Let us go straight to the King. He once sanctioned the principle which this message condemns. Did he not, as Prince of Wales, take part as a peer in the proceedings against Lord Chancellor Bacon and Lord Treasurer Middlesex?

A somewhat similar scene had taken place in the Lords, where also a direct appeal to the King was proposed.

On leaving the Commons, Finch had gone to Charles and reported what had happened in the Lower House. He returned with a message that the King had no wish to debar them from their right of inquiry.

With that, in the Commons the members went on the next day, Friday, June 6, debating their remonstrance, and were continuing their debate on Saturday; but in the Lords, Bishop Harsnet, pointing out that the King's message was not responsive to the Petition of Right, said the Commons should be asked to join in requesting the King to give another answer. The Bishop's proposal was so strongly supported that even Buckingham had to give way; and when the Commons joined in the plea, he headed the deputation, June 8, 1628, to ask Charles to respond to the Petition of Right. They returned with the word that the King would meet the Houses at four o'clock, and the Commons were summoned to the bar. Was it for dissolution or for assent to the Petition? They did not know.

Charles addressed them:

The answer I have already given you was made with so good deliberation and approved by the judgment of so many wise men, that I could not have imagined but that it should have given you full satisfaction, but to avoid all ambiguous interpretations, and to show you that there is no doubleness in my meaning, I am willing to please you in words as well as in substance. Read your Petition, and you shall have such an answer as I am sure will please you.

Accordingly, there was then read 'The Petition of Right.' 'Soit droict fait comme est désiré,' the Clerk pronounced the formula of royal approval.

And the members of Parliament who had gone through the bitter fight must have felt the double meaning in 'droict,'

changing the phrase from the simple 'Be it enacted' to 'Let Justice be done as is desired.'

Coke was in his seventy-seventh year.

'Lord, now lettest thou thy servant depart in peace, according to Thy word: for mine eyes have seen thy salvation, which thou hast prepared before the face of all people, a light to lighten the Gentiles and the glory of thy people Israel.'

Petition of Right — Coke had inserted the caption himself, and thereby stirred a little burst of petulance in the Lords, who began to sense the change in the relative importance of the Commons, and said the Lower House had exceeded its function in entitling the measure.

But still a little more labor. The Commons had no intention of dropping their Bill of Particulars just because the general principles set forth in the Petition had been accepted, and Coke was at the head of the committee for drawing the remonstrance. It covered the specific grievances which had brought on the Petition. After some debate, the Commons had boldly named Buckingham in their remonstrance, saying:

And our humble desire is further that your excellent Majesty will be pleased to take into your princely consideration whether, in respect the said Duke of Buckingham hath so abused his power it be safe for your Majesty and your Kingdom to continue him either in his great offices or in his place of nearness and counsel about your sacred person.

But Charles had sent an order to the Star Chamber that all documents in the prosecution of the Duke should be removed from the file, 'so that no memory thereof remain of the record against him which may tend to his disgrace'; and when, on the day after this order, the deputation presented the remonstrance, and with it, at last, the grant of the five subsidies, he told them that he had not expected a remonstrance, after he had so graciously granted the Petition of Right, and as for Church and State, of which he perceived they understood not what belonged to either as well as he thought they had done, he would consider their grievances as they should deserve.

When Charles announced that he would prorogue the Parliament June 26, the Commons, undismayed, began the preparation of a further remonstrance dealing particularly with tonnage and poundage, in connection with which, indeed, the

use of the word 'tax' in the Petition without the addition of the word 'excise' left the prohibition of the levy of these customs duties without grant still open to argument (for all of Coke's 'we see what advantage they have that are learned in the law in penning articles above them that are not, how wise so ever'). The Commons had expected to present the further remonstrance on the last day of the session; but to avoid receiving it, the King entered the Lords early in the morning of the day set and brought the session to a close.

On August 23, 1628, at Portsmouth, where Buckingham was fitting out the fleet for another expedition for the relief of La Rochelle, John Felton plunged his tenpence piece of cutlery into the heart of the Duke.

When Parliament reassembled January 20, 1629, Selden carried on the lawyer work rather than Coke, who, dogged and sturdy, had stood so long in defense of the law of England. His son Clem again appeared with his fighting spirit. The Crown had continued the levy of tonnage and poundage without grant, on advice, it was charged, of the new Lord Treasurer, Weston, and Clement flung into the debate; 'Whoever laid tonnage and poundage on the people without the gift of Parliament, is an enemy to the commonwealth, and that this great person hath done this, there are not light suspicions only upon him, but apparent proof.'

In the session of 1628, a vigorous young man of twenty-nine sat as member for Huntingdon, in silent observance of the great struggle for the Petition of Right. He spoke once, briefly, in the session of 1629. He was Oliver Cromwell.

In the mind of the rising generation, Coke, by his stand as judge against James, and by his subsequent position in Parliament, became one of the elder heroes in the contest with the Crown. Coke's daughter Bridget had married William Skinner, and Milton, born in 1608, in his sonnet to his friend Cyriak Skinner, son of the pair, wrote that Coke,

... On the Royal Bench
Of British Themis, with no mean applause
Pronounced, and in his volumes taught, our laws,
Which others at their bar too often wrench.

XXII

WITH the passing of the Parliament of 1628, the storms of life were over for Coke, the grim old fighter. He retired to his long, gray pile at Stoke Poges, to pass his days in further work on those writings of his which he left as monuments to legal industry and learning. His friends in London remembered their leader. Three years after his retirement, the Reverend Joseph Mead writing to Sir Martin Stuteville, January 30, 1631, remarked:

Sir Edward Coke, being very infirm in body, a friend of his sent him two or three doctors to regulate his health; whom he told that he had never taken physic since he was born, and would not now begin; and that he had now upon him a disease which all the drugs of Asia, the gold of Africa, the silver of America, nor all the doctors of Europe could cure — old age. He therefore thanked them and his friend that sent them, and dismissed them nobly, with a reward of twenty pieces to each man.

Lively Frances, vivid daughter of Lady Hatton, after her years of the husks of Court festivities with her mother and her bodily infirm and finally crazy husband, after her reach for romance with Robert Howard, brother of that other wayward Frances, came home to her father. Those mad days when, girl pawn of ambition, she had been raced over the countryside, snatched from father to mother, from mother back to father, and thrust into arms whose touch was to nauseate till she turned and sipped honeydew that distilled the poison of social reprobation! Was Stoke Poges, where a country parson later wrote some lines on a peaceful churchyard, a haven of rest for a badly treated spirit?

At least, she did not have to play much the part of nurse for senile decrepitude. In spite of that disease which all the doctors of Europe could not cure, Coke, in his eighty-second year, still rode horseback, and vigorously; but was not agile enough to jump clear when on an early May day in the lovely countryside his mount fell with him beneath. He survived, however, a year and four months longer.

Coke had so aroused the fear and animosity of the King and his Councillors that they disturbed even the dying days of the old lawyer. A rumor in 1631 that Coke was publishing a book, in which there was 'somewhat to the prejudice of the preroga-

tive,' stirred Charles to order the Lord Keeper to stop its publication, because Coke was 'held too great an oracle amongst the people, and they may be misled by anything that carries such authority as all things do that he either speaks or writes.' And, to take no chance, when he lay dying, down on Stoke Poges the emissaries of the Council came, ransacked the house for his manuscripts and other papers, and went to his chambers at the Inner Temple and seized his papers there, not to be restored till seven years later the Commons, on the motion of one of Coke's sons, requested their return to the heir.

As Sir Julius Cæsar, Master of the Rolls, wrote:

September 3rd, 1634, died at his house at Stoke in Buck mine old friend and fellow bencher, Sir Edward Coke, Knt., being Wednesday, between eleven and twelve o'clock at night, in his bed quietly, like a lambe without any groans or outward signs of sickness, but only spent by age.... Of the most famous memory; a generall good scholar, and most skilful in the common laws of England of any man of his time, or before him for the space of three hundred yeares at least, as may appear by his book of reports and his Commentaries upon Lytleton.

His heart had ever dwelt with his sweet Bridget Paston, and in a codicil to his will he had directed that he be buried at Tittleshal, beside her. His surviving executors, his cousin, Sir Randolph Crew — who under Charles had been dismissed from the Chief Justiceship of the King's Bench for refusal to be subservient, as his testator had been dismissed from the same office under James — and Sir Thomas Coventry, still Lord Chancellor, probated Coke's will: '*ultima voluntas mei Edw. Coke militis ten nov. 1633 manu mea propria conscript.*' In it he referred to the patience of Job whose example he had endeavored to follow after prosecution and imprisonment, and requested '*noe funerall pompe to be made for me.*'

According to his direction, he was buried at his birthplace beside Bridget, the beloved, whose tomb at Tittleshal church, in contrast to the colorful portrait of her early bridal days, showed a soberly clad matron with her eight children who survived her kneeling at her feet. Near her effigy, one for her husband was erected, disclosing, beneath a canopy of alabaster, Coke's form in coif and judge's robe and chain, beruffled neck, and square-toed shoes with large rosettes. His fame as



Photograph by H. Applegate

MONUMENT TO COKE IN THE PARISH CHURCH AT TITTLESHAL

defender of the people's liberties preserved the image from the iconoclasm of the Roundheads which was to come.

The epitaph states as the reputed last words of the tough, fibrous old lawyer, who in life, outside the will of the common law of England, was impatient of any will other than his own :

Thy Kingdom come, Thy will be done.

BOOK V

THE WRITER

I deal only with the municipal laws of England, which I profess, and whereof I have been a student above these thirty-five years; my only end and desire is, that such as are desirous to see and know (as who will not desire to see and know his own?) may be instructed: such as have been taught amiss (every man believing as he hath been taught) may see and satisfy himself with the truth, and such as know and hold the truth (by having so ready and easy a way to the fountains themselves) may be comforted and confirmed.

EDWARD COKE

BOOK V

THE WRITER

I

'CERTAIN it is that when a great, learned man (who is long in the making) dieth, much learning dieth with him.' Thus Coke spoke of Littleton, and with equal force it may be said of Coke, who lived long and acquired much learning. Fortunately, however, all his learning did not die with him. There remain to us his monumental work, 'The Institutes of the Laws of England,' consisting of four parts; a short tract entitled 'The Compleat Copyholder'; a reading on the Statute 27 Edw. I, called 'The Statute de Finibus Levatis'; a 'Treatise on Bail and Mainprize'; thirteen volumes of his reports, and a 'Book of Entries,' consisting of various forms of pleading.

Properly to appreciate the nature and extent of Coke's learning, and his influence upon and contribution to the development of the common law of England, it seems desirable to take a glance at the state of the law prior to the time he became active as barrister, writer, judge, historian, and critic.

II

THE first half of the twelfth century marks the definite beginning of the English common law. The Norman kings had completed their conquest which carried in its train the feudalization of England. The feudal system laid the foundation of the real property law, and furnished a field in which the common lawyers grazed for centuries, enjoying both the mental joy and satisfaction that comes from the apprehension of exceedingly delicate distinctions and the monetary reward that is generally bestowed upon those who, by their ingenuity and skill, are able to conduct their clients through the tortuous reaches of litigation to a successful and profitable end. These early common lawyers were as skilled in their field as their medieval contemporaries who engaged in the consideration of the equally delightful, but much less profitable problems of metaphysics; and if there be any doubt that the practice of

the common law fostered both dialectical and metaphysical skill, the reader is cordially invited to read the report on Shelley's case, in which Coke took a part.

By the twelfth century, also, the Roman Church and its system of ecclesiastical law had been established in England. The practice of the Chancellor in issuing writs to various courts, authorizing parties to appear by an attorney designated in the writ, had resulted in the beginnings of the legal profession; and with the permanent establishment of the superior courts at Westminster, the professional attorneys, their clerks and students, congregated in the Inns around the courts, and by about 1300 there was a distinct legal profession.

With the establishment of the legal profession came writings on the law, and these writings reflect the state of development of the law, and to a large extent constituted the raw material upon which Coke drew in his own writings.

III

EARLIEST of the classics in the common law is Glanville's 'Treatise on the Laws and Customs of the Kingdom of England,' which was first published between 1187 and 1189. Ranulph de Glanville had been born in Suffolk about 1130, his ancestors having come to England with William the Conqueror. He had been variously sheriff of his county, a commander of the British forces against a Scottish invasion, ambassador to Flanders, France, and other countries, justice of the Court of King's Bench, and Chief Justiciar of England in the reign of Henry II. He was one of the witnesses to Henry's will and a trustee under it, and, after Henry's death and Richard's accession, set out for Palestine, dying at Acre about 1190. Glanville was, in Coke's day, and even is to-day, considered one of the authoritative writers on the early English common law. It is the first attempt at a rational scientific exposition of the common law of England, the whole centering around an exposition of the law and practice in the Curia Regis; although in the last two books he treats of writs of right issued out of the Lords' Court, and the manner of removal from there to the County Court, and the Curia Regis. The book shows, too, the subject then of chief interest to com-

mon-law lawyers — real property, with all its feudal appendages: homage, relief, fealty, services, wardship, etc. Pleas of the Crown form the last book.

IV

THE next important law book was Bracton's '*Tractatus de Legibus et Consuetudinibus Angliae*,' written about 1250 to 1256. Bracton had been an ecclesiastic and a judge, probably a student at Oxford, and was familiar with the civil law. The civil law made itself felt in Bracton's systematization of the common law — so much so, that Sir Henry Maine says of him that he 'put off on his countrymen, as a compendium of pure English law, a treatise of which the entire form and a third of the contents were directly borrowed from the *Corpus Juris*.' This is not surprising, in view of the renaissance of legal studies in his day, particularly in Italy and France; nor was it particularly injurious to the English common law, as subsequent development shows. Bracton was largely influenced by Azo of Bologna, who died about 1230. Early in the thirteenth century, Azo was head of the Bolognese school of law, and his reputation was so great that he was spoken of as the 'master of all the masters of the law.' His chief works are a *Summa* of the first nine books of the Code, and a *Summa* of the Institutes. That Bracton studied these books seems clear; and though there is diversity of opinion as to the extent to which Azo influenced him, there is little dispute that the form of Bracton's work shows definitely the Roman influence.

When considering the influence of the Roman law on the English common law, it must not be forgotten, as John Selden has pointed out, that for some three hundred and sixty years, or from about A.D. 50 to about A.D. 410, Great Britain was a part of the Roman Empire and under the Imperial Roman rule; that in Great Britain, during those three hundred and sixty years, the Roman civil law was enforced, based upon the Law of the Twelve Tables, the Praetorian Edicts, and the writings of the old civilians like Gaius, Papinian, Ulpian, and Paul. It seems hardly credible that any people should live for three hundred and sixty years under a particular form of government and not bear the imprint of that form of government in many of its customs, usages, laws, and institutions and that

some infusion of them should not filter through to the conquering Germanic host. Furthermore, though the Roman law was politically removed, it was not spiritually and ecclesiastically; for after the conversion of the conquerors, the canon law, which was a branch of the civil law and frequently leaned heavily on it, continued with some changes and modifications until after the period in which we are interested, and was applied in all of the ecclesiastical courts.

During the approximately seventy years which had elapsed between Glanville and Bracton, there had been many changes and developments in the English law, and it was apparently not uncommon that persons were elevated to high judicial office, who, in the words of Bracton, 'ascend the judgment seat before they have learned the laws.' Hence, Bracton felt the need of a new work on the English law. His treatise consists of five books: the first deals with things and the rights of persons in things. The second book treats of the acquisition of property by various means and of property rights that are absolute or conditional; of the feudal incidents of property; of testaments and testamentary dispositions. Actions and the various courts authorized to maintain them form the subject of the third book, which includes pleas of the Crown. The fourth and fifth books concern themselves with the law of real property, and the actions and writs used in enforcing real property rights, and other procedural matters. Bracton's work was much more detailed than Glanville's, but its very length and detailed treatment lessened its utility. So the next two famous books on the English common law, Britton and Fleta, were essentially abbreviations of Bracton.

V

BRITTON was published in the reign of Edward I (about 1290), with the following prologue by Edward:

EDWARD, by the Grace of God King of England, Lord of Ireland, and Duke of Aquitaine, to all his faithful people and subjects of England and Ireland, peace and grace of salvation:

Desiring peace among the people who, by God's permission, are under our protection, which peace cannot well be without law, we have caused such laws as have heretofore been used in our realm, to be reduced into writing according to that which is here ordained. And we will and command that throughout England and

Ireland they be so used and observed in all points, saving to us the power of repealing, extending, restricting and amending them whenever we shall see good by the assent of our earls, barons and others of our council; saving also to all persons such customs as by prosecution of time have been differently used, so far as such customs are not contrary to law.

Who Britton was is somewhat in doubt, but there are several interesting things about his book. In the first place, its sponsorship by Edward I gave it a quasi-official status; secondly, it was written in law French, a language more familiar to the people generally than the Latin of Glanville and Bracton.

Britton is divided into six books, the first of which deals with the authority of justices and other officers, the general method of conducting the King's courts, and with pleas of the Crown. The second book is concerned with wrongs affecting the possession of real property, and the remedies for such wrongs. The third book treats of inheritances, the feudal incidents of real property, and actions by heirs for the enforcement of their rights in real property.

Actions concerning the Church and matters of religion form the subject of the fourth book. The fifth and sixth books again deal with certain phases of the real property law, such as the right of dower and writs of entry.

VI

EDWARD I is frequently referred to as the English Justinian; he not only assisted in the revision of the laws of England, but he cleared corruption and bribery out of the Temple of Justice. In 1288, of the sixteen judges of the various courts of England, fourteen were dismissed from the Bench for corruption in office, and some were imprisoned. Selden believes that one of the deposed judges who was imprisoned in the Fleet prison is the author of the book known as 'Fleta.' 'Fleta' was written about 1290, is in Latin, and substantially is an edition of Bracton brought up to date. The first part is of pleas of the Crown; the second, of the officers of the King's household; and the third, of the practice in the courts, the forms of writ, and similar matters.

VII

THE 'Mirroure of Justices' or 'Speculum Justiciariorum' probably belongs to the same period — 1290. This is an odd little book, as to the origin of which there is much doubt. It is believed by some to have been written by Andrew Horne, a fishmonger of London, who had been elected Chamberlain of the City, and wrote the book, or caused it to be written, for the guidance and instruction of judges and others charged with public duties. It was written in law French, and is divided into five principal chapters, dealing with pleas of the Crown or offenses against the public peace, and of the various public officers charged with the administration of justice, of actions of various kinds, and of certain abuses that then existed.

Coke believed it to have been an old book which accurately set forth the law as it had stood for some eleven hundred years prior to his time, but it is now believed to have been the work of an amateur who put more fiction into his statements of the common law than the various fictitious actions warranted, and modern research places the writing at about 1290.

VIII

ABOUT the end of the thirteenth century came the Year Books, reports in French of discussions in court between the judges and the barristers. The authors are unknown, some believing them to have been law students who made the notes to assist them in their study of the law; others inclining to the view that they were made by lawyers and judges for their own use in practice.

Until recently there were also a considerable number who believed that the Year Books were the work of official reporters paid by the Crown. This belief was based on a remark by Plowden in the preface to his Reports; but careful investigation seems to show quite conclusively that there were no paid official reporters, for there is no record of their appointment, no record of payments to them for their services, and the reports even of the same case are so varied that they could not have come from any one official source. But by whomsoever made, the Year Books give a very substantial body of almost continuous case law for the period from about 1300 to nearly the middle of the sixteenth century.

IX

By the time of Edward III (1326-77), the law had so far crystallized that certain writs were required to begin certain actions, and the selection of the proper writ had become highly important. The need for information as to the nature of the various writs, and the proper writ to be sought, resulted in the publication of a book called the '*De Natura Brevium*.'

It existed for almost three centuries before it was put into print in 1531, and during those three centuries grew as writ after writ was devised to meet new situations. To use legal parlance, it is primarily a procedural book, a work on adjective law, as against a book on substantive law, such as Bracton's.

X

NEXT came Fortescue, first of the troubadours to sing the praises of the laws of England, and, properly enough, he entitled his book '*De Laudibus Legum Angliae*' — In Praise of the Laws of England.

John Fortescue — a lineal descendant of the knight, Robert Le Fort Escu (strong shield), who bore the shield of William the Conqueror at the battle of Hastings — was educated at Exeter College, Oxford, and received his legal training at Lincoln's Inn. He was made Chief Justice of King's Bench in 1430, and Lord Chief Justice of England in 1442, serving as such until about 1461. He lived in the troublesome times of the civil war between the Houses of York and Lancaster, and actively assisted the Lancastrian side, as a result of which he was exiled in Flanders with Henry VI's son, Edward, and Henry's Queen, Margaret, who was a niece of the Queen of France. It was during his exile (about 1464-70) that he wrote the '*De Laudibus*,' primarily, it is said, for the instruction of the young Prince, but very likely also as an answer to an essay which advocated the adoption in England of the civil law of Rome. It is said that William de la Pole, Duke of Suffolk, and a great favorite of Henry VI, was exerting his efforts to bring this about, and if he was, he was not alone in this endeavor. Margaret, Henry's Queen, was a native of France, where the civil law flourished, and she continually whispered into the royal ear the great renown of the civil law, particularly in respect of its maxims concerning the kingly power. Further-

more, it must be remembered that this was the period of the reception of the Roman law all over Continental Europe. In Germany, the local law was being swept away before the increasingly popular civil law. The Netherlands, Flanders, Spain, and Portugal had all adopted it, and it is therefore not surprising that in England there was also a movement in its favor.

Fortescue's book is constitutional and political, rather than legal. Its method is the Socratic dialectic, the Prince asking the questions and the Chancellor answering them. Fortescue shows to the Prince the advantage of the English common law over the civil law in many essential matters. In criminal cases, Fortescue believes the trial by jury is much more likely to be fair and to ascertain the real truth than the civil law method of trial; that the common law does not sanction the use of torture, as seemed to be the practice in France at that time; that as a result of the wisdom and liberality of the common law, English kings are greater and more powerful, in the liberties and properties of their people, than the arbitrary rulers of the civilian countries in the vassalage of their slaves.

XI

THOMAS LITTLETON, with whose name that of Coke is so inseparably linked, is the next famous legal writer in order of time. He was a contemporary of Fortescue, and in the Civil War took the Yorkist side. The origin of his name is rather interesting. Thomas Westcote, Esq., apparently a worthy but not a very rich barrister, married Elizabeth de Littleton, who, as the only child of Thomas de Littleton, Lord of Frankley, was the heiress to a large inheritance of land. She stipulated with Thomas before her marriage that male issue should be called by the surname Littleton, and not Westcote, so that the paternal acres would continue to bear the name of Littleton. Thomas Littleton, the author of the 'Tenures,' was their eldest son, bearing the Christian name of his father and the surname of his mother. The exact date of his birth is unknown, but was probably in the early 1400s. He became a member of the Inner Temple, the same inn as Coke, and between the years 1440 and 1450, began to make a reputation, particularly in matters concerning real property. For instance,



SIR THOMAS LITTLETON
Portrait in the Inner Temple, London

it is said that a plaintiff in an action against the widow of Mr. Justice Paston (it will be remembered that Coke married one of the Pastons) complained to the Chancellor that he could not get any barrister to appear for him because Sir William Paston had been a justice of the Court of Common Pleas, and his son and heir, John Paston, was also a 'man of court'; and he prayed that 'it please your good Lordship to assign and most strictly to command John Heydon, Thomas Lyttylton, and John Olston to be of counsel with your said beseecher.' Littleton is also the earliest recorded Reader in the Inner Temple. His reading was on the Statute of Westminster II, known as the 'Statute de Donis Conditionalibus.' Like Coke, he was Recorder of Coventry in Norfolk. He became serjeant in 1453, a justice of the Court of Common Pleas in 1466, and remained on the Bench until his death in 1481. Coke tells us in the preface to the first volume of the 'Institutes' that Littleton wrote his 'Tenures' after his accession to the Bench for the instruction of his son Richard, and that the book was not published either in the lifetime of Sir Thomas Littleton or in that of his son Richard. However, between the publication of the 'Tenures,' about 1482-83, and the time when Coke's commentaries on Littleton were first published in 1628, there were more than seventy editions of the little book — more than sufficient evidence of the esteem in which it was held. Coke said of it

I affirm and will maintain it against all opponents whatsoever, that it is a work of absolute perfection in its kind, and as free from error as any book that I have known to be written of any human learning.

The 'Tenures' dealt solely with the law of real property, and summed up the land law of England as it had been developed by the common lawyers of the Middle Ages, and before it was changed by various decisions in equity and by statute. It is the first important law book that is thoroughly English and wholly free from Roman influence. It is written in clear and accurate style, contenting itself with a statement of what the law is, without comment or speculation as to the wisdom or otherwise of the rule of law set forth, and for some two hundred years the 'Tenures' was one of the introductory books for the lawyer.

XII

ANTHONY FITZ HERBERT made the next contribution to the literature of the common law by his famous 'Graunde Abridgement,' which was published about 1514, and by his 'New Natura Brevium,' so called to distinguish it from the older 'Natura Brevium.' Fitz Herbert was born in 1470, in due time became a member of Gray's Inn, was made a serjeant-at-law in 1510, King's Serjeant in 1516, and a judge of the Court of Common Pleas in 1522. He took an active part in the impeachment of Cardinal Wolsey, and also sat on the commission which condemned Sir Thomas More. He died in 1538. He was the author of a number of books, but aside from the 'Graunde Abridgement,' the 'New Natura Brevium' is of most interest to lawyers.

The 'Natura' sets forth in full the various writs used in common law actions with comments and references to the Year Books and other sources of precedents; and thus is not simply a work on procedure, but practically a commentary on various common law actions.

XIII

'THE DOCTOR AND STUDENT,' published in 1518, was written by Christopher St. Germain, a barrister of the Inner Temple, and consists of a series of dialogues between a student of the common law and a doctor of divinity. Aside from some comments on the nature of laws in general, the book is concerned largely with various phases of the law of real property.

XIV

THE Commentaries or Reports of Edward Plowden, of the Inner Temple, cover a period of thirty years, from 1550 to 1580. They are the first modern law reports, are the result of personal attendance at court, and were prepared for publication by the author himself. Evidently, Plowden did not at first intend to make his Reports public, but various friends of his borrowed them, their clerks made copies, and some copies came into the hands of printers who intended to publish them. In order to prevent 'corrupt' copies from being scattered abroad, Plowden decided to publish his Reports himself. He

tells us that in making his report of a case, he had copies of the record, that he studied the points of law arising out of the case, and frequently had so thoroughly mastered it that he could himself have argued it. Then, when the report had been written out, he showed it to the serjeant or judge who argued the case, and when it was approved in this way, he entered it into his book of Reports. Such a careful and painstaking process was bound to result in a very valuable report, and consequently his Reports were held in high esteem.

Sir James Dyer, Chief Justice of Common Pleas for some twenty years (about 1562-82), is another of the early common law reporters whose work is very highly regarded.

Both Plowden and Dyer were Coke's contemporaries, and the Reports of both were greatly esteemed by Coke.

XV

THE writings just briefly reviewed constituted the raw material upon which Coke drew; and that he made good use of them is evident from the many references to them in his Institutes and Reports, and from the preface to the ninth volume of his Reports, where he pays his respects to and comments in detail upon each of these books. His various writings show that he was saturated in the legal learning from the time of Glanville and Bracton to his own day; it was generally acknowledged that none surpassed him in knowledge of the Year Books, the various writs of the common law, and the medieval statutes.

For a hundred years prior to Coke's time, Littleton's 'Tenures' was the first book to be studied by the law student. It was generally printed with wide margins to permit annotations, and Coke must early have entered in his copy notes of his readings in the Year Books. In the course of time, he gathered an immense amount of common law learning upon each paragraph of the 'Tenures' — one may almost say upon each word, for not infrequently he goes to great length to show the derivation, meaning, and construction placed upon single words by the courts. Coke's commentary upon Littleton is so comprehensive and detailed that it has been said to be a masterpiece imposed upon a masterpiece. Coke not only gives the references to the Year Books and to the legal writers be-

fore his time upon the particular statements of law made by Littleton, but he calls attention to diversity of decisions, and attempts to reconcile the conflicting cases. But the very mass and weight of his learning is his vice. He has at hand all the material for the construction of a beautiful and symmetrical structure, and yet contents himself, as some one has said, with piling it in heaps around an ancient monument, burying not only the monument, but leaving his own contribution a seemingly disorganized mass, difficult of apprehension and repellent to the student. One can scarcely refrain from comparing Coke and Bacon and noting how essentially Coke was the legist, interested in particular cases, whereas Bacon was the statesman and philosopher, using the particular cases for the induction of general principles of law. Coke did not realize the deficiencies of his Commentary on Littleton, for as he says in his preface, he is calling his work 'Institutes,' 'because my desire is they should institute and instruct the studious, and guide him in a ready way to the knowledge of the National Laws of England.' With all the defects of method, however, the Commentary on Littleton is of immense value. If it were not for Coke, we would have to search for the common law real property learning throughout the vast and chaotic Year Books, or in the various abridgments of Statham, Fitz Herbert, Brooke, and Rolle.

XVI.

THE Commentaries on Littleton's 'Tenures' was the only volume of the Institutes published during Coke's lifetime. The first edition appeared in 1628 when Coke was seventy-six years old. For the next one hundred and fifty years, or until Blackstone's Commentaries on the Laws of England were published, Coke on Littleton was the lawyer's primer. Necessarily this book is largely concerned with the law of real property, but, as is usual with Coke, he frequently takes a proposition of law as merely a point of departure from which he can spread before the reader the entire common law learning on any matter suggested by the text, whether particularly relevant or not. Thus, under the heading of 'Estates in Fee Simple' (lib, I, sec. 1) he discusses, among other things, the following:

Curtesie Dengleterre
En taile apres possibilitie disuue extinct
ne terra viques cund de dait par ten
heritance que fut vn foits en luy 10.
D. 6. 1. C. mes celluy en le reuerlion
port entre fil alien en fee. 45. C. 3.
22. C. 39. 37. 67.
Curtesie Dengleterre. Cap. 4.
Tenaunt par la curtesie dengleterre
est lou home prent femme seile en
fee simple, ou en fee taile general, ou
seile contre heire de le taile speciall & ad
issue par meisme la femme, male ou fe
male, oyes ou vise, soit issue aps mort
ou en vie, si la feme deuie, le baron ti
endza la terre durant la vie par la ley
Dengleterre. Et est appele tenaunt per
curtesie dengleterre, pur ceo que t ne
ble en nul autre realmi, forsqz tant so
lement en Engleterre.
Et ascuns ont dit, que il ne serra t p
le curtesie, sinon que tenant qul ad p
la feme soit oye crie, car p l' crie e pue
q le tenant fuit nee vie. Aden quere
le dower. Cap. 57.
Tenaunt en dower est lou home est
seile de certeine terres ou tenemens
en fee simple, taile general, ou cõe heir
de le taile speciall, & prent feme & de
nie,

1. The nature of feudal property holdings
2. Tenancy
3. The several kinds of fees
4. The kind of property in which one may have a fee simple estate
5. Persons who are capable of purchasing and holding real property
6. Infancy, its duration, incidents, rights and obligations
7. Right of married women to take and hold real property
8. Right of idiots and other persons non compos mentis to take and hold real property
9. The legal signification of the word 'land'
10. Partition between coparceners
11. Title to land under water
12. Documents of title, and who is entitled to possession of them
13. The disqualification as a witness of a champion in a writ of right who becomes a recreant or coward
14. Inadmissibility of testimony of wife against husband
15. Seals
16. Effect of attainder for treason
17. Title used by various kings of England in conveyances
18. Heritability of aliens
19. Heirship in goods and chattels
20. The writ de ventri inspiciendo, when it issues, and its purpose
21. Ten ways of conveying land at common law, viz.
 - (a) By feoffment
 - (b) By grant
 - (c) By fine
 - (d) By common recovery
 - (e) By exchange
 - (f) By release
 - (g) By confirmation
 - (h) By grant of reversion or remainder
 - (i) By bargain and sale deed
 - (j) By devise by custom of a particular place

And in the discussion there are numerous references to the Year Books, to Glanville, Bracton, Fleta, the abridgments, reports other than the Year Books, Britton, the 'Mirrour of Justices,' and to practically all the other books previously described.

No attempt will be made here to perform the almost impossible task of summarizing Coke's Commentaries on Littleton, but from the foregoing brief statement of the contents of a single section, the range of his learning can easily be seen.

That Coke should have gathered all the common law around the single field of real property law is, in a way, not surprising, for in his day land was the principal wealth, and practically all civil litigation and many crimes concerned real property.

XVII

THE second volume of the Institutes was first published in 1641, about seven years after Coke's death. Much less difficult of comprehension than the first, it is an exposition of many ancient statutes beginning with Magna Charta, and including such famous enactments as the Statute of Westminster II, more commonly known as the 'Statute de Donis Conditionalibus,' the object of which was to prevent the alienation of estates by those who held only a partial interest therein, in such manner as to defeat the estate of those who were intended to hold subsequently.

The method of commenting on the various statutes is set forth by Coke in the preface to the Second Institute. He says:

We in this second Part of the Institutes, treating of the ancient and other statutes have been enforced almost of necessity to cite our ancient Authors, Bracton, Britton, the Mirror, Fleta and many records never before published in print, to the end the prudent Reader may discern what the common law was before the making of every of those Statutes which we handle in this work, and thereby know whether the Statute be introductory of a new law or declaratory of the old....

Some of the so-called statutes are not at all such in the ordinary meaning of the term. For example, the 'Articuli Cleri' is a complaint by the ecclesiastics to the King against the encroachment of the common law judges upon the jurisdiction of the ecclesiastical courts in the reign of James I, with the reply of Coke, then Chief Justice of the Court of Common Pleas.

Altogether thirty-nine statutes are commented upon. In the commentaries on some of the statutes — e.g., the Magna Charta, the Confirmatio Cartarum, and the De Tallagio non Concedendo — are to be found many of the doctrines concerning the supremacy of Parliament which Coke advocated during his years in the House of Commons, after his removal from the Bench.

XVIII

THE THIRD INSTITUTE, first published in 1644, deals with pleas of the Crown or criminal law. Beginning with high treason, regarded as the most infamous and most dangerous crime, it runs the gamut of all criminal offenses, with judgments and executions in such matters, and with other consequences of conviction such as attainder and forfeiture. And the book appropriately ends with a chapter on pardons and another on restitutions. The method of comment is the same as that of the Second Institute; i.e., first the statute is given and explained, then the common law is set forth with citation of cases and other authorities.

XIX

THE FOURTH INSTITUTE was also published in 1644, and concerns the jurisdiction of courts, discussed in order of their importance, starting with the High Court of Parliament, and going down the list to the local courts. In general, the method of treatment is as follows: (1) a brief statement as to the origin of the court; (2) a description of its organization — i.e., the number of justices, clerks, and other officers; and (3) a discussion of its jurisdiction. Throughout this volume of the Institutes, Coke's very strong leaning to the common law side of the law is evident. For example, in the discussion on the Court of Chancery, he is at pains to point out in detail all the statutes and decisions which limit the power of that court, both in the matter of original jurisdiction and in the matter of a suit in equity after judgment at law, citing in full, evidently as a horrible example, the articles of impeachment against Cardinal Wolsey.

So in the discussion of the Court of Admiralty, he is much concerned with the prohibitions issued by the common law courts to the Court of Admiralty; in fact, the principal part of the chapter consists of the complaint of the Lord Admiral of England to King James, and the reply of the common law judges, of whom Coke, at that time, was one.

Again, in the chapter on the ecclesiastical courts, Coke reviews the many debates and discussions held before King James as to the right of the courts of common law to issue its writs of prohibition and habeas corpus to the ecclesiastical

courts. In the case of all these courts, the power and authority of the common law courts is magnified, and that of the others minimized.

That volume of the Institutes which treats of courts must naturally have suggested to Coke the importance of a judiciary free from corruption and evil influence; and may we not also assume that he had in mind the brilliant Bacon whose career was blighted by the taking of gifts from suitors? At any rate, at the end of the Fourth Institute Coke gives a parting admonition to the judges in these words:

And you, honorable and reverend judges and justices, that do or shall sit in the high tribunals or seats of justice, fear not to do right to all, and to deliver your opinions justly according to the laws; for fear is nothing but a betraying of the succors which reason should afford; and if you shall sincerely execute justice, be assured of three things: first, though some will malign you, yet God will give you his blessing; secondly, that though thereby you may offend great men and favorites, yet you shall have the favorable kindness of the Almighty, and be his favorite; and lastly, that in so doing, against all scandalous complaints and pragmatic devices against you God will defend you as with a shield: For thou, Lord, will give a blessing unto the righteous, and with thy favorable kindness wilt thou defend him as with a shield.

XX

'A BOOKE of Entries containing perfect and approved Precedents of Counts, Declarations, Informations, Pleints, Inditements, Barres, Replications, Rejoynders, Pleadings, Processes, Continuances, Essoines, Issues, Defaults, Departure in despite of the Court, Demurrers, Trialls, Judgements, Executions, and all other Matters and Proceedings (in effect) concerning the practique part of the Laws of England, in actions Reall, Personall, and Mixt, and in Appeales; necessarie to be knowne, and of excellent use for the moderne practice of the Law, many of them contayning matters in Law and points of great learning: And none of them ever imprinted heretofore, collected and published for the common good and benefit of all the studious and learned professors of the Laws of England,' was published by Coke in 1614, while he was Lord Chief Justice of England, and a member of the Privy Council, and is as long as its title indicates. It is a book on practice

primarily, a field quite as important as that of substantive law, for, as Coke says in his preface:

What availeth the Serjeant or Apprentice the general knowledge of the laws, if he know not withall the forme and order of legall proceedings in particular cases, and how to plead and handle the same soundly, and most for his Client's advantage?

The 'Book of Entries' contains the pleadings and records of many of the cases published in the first nine parts of the Reports, and every precedent, or form as we should call it to-day, refers to the court where it is to be found, with further details which make identification simple. It is an immense quarto volume, consisting of almost nine hundred pages of four columns each written in the old law French.

XXI

A 'FINE' was a common law method of conveying real property, and may be described as an amicable composition of a suit, either actual or fictitious, by leave of the court, whereby the lands in question became, or were acknowledged to be, the rightful property of one of the parties. It is so called because it puts a finis or end to litigation. However, the fine frequently did not accomplish its purpose, for the parties against whom the fine was levied oftentimes sued to annul it, claiming that at the time it was levied they or their ancestors were always seized of the lands contained in the fine, and thus it often happened that a fine lawfully levied was unjustly defeated. To remedy this condition, the Statute 27 Edw. I, called the 'Statute de Finibus Levatis,' was passed, which provided in substance that in the levying of fines they should be openly and solemnly read in the courts, on two days in the week, and that thereafter no answers or exceptions contrary to the fine should be admitted.

Coke's Reading on Fines took place in 1592. There are in all twenty-three readings, in which are discussed, among other things, the nature of a fine and its effect, who may grant and who may receive a fine, of what things a fine may be levied, and how and where it is kept or recorded.

XXII

'THE COMPLETE COPYHOLDER' was written by Coke about 1630, and is a comparatively small treatise on copyhold estates. It is one of the most readable and best organized of Coke's writings, consisting of twenty chapters, in which are discussed, among other things, the origin of manors and the common law services incident to manors, the manor courts, the nature and origin of copyhold tenure, the transfer and surrender of copyholds, the descent of copyholds, and actions concerning them. Contrary to his usual custom, Coke in this little book is brief and precise, giving ample authority for the propositions of law set forth, but not indulging in interesting but irrelevant digressions into various suggested phases of the common law.

XXIII

'A TREATISE OF BAIL AND MAINPRIZE,' first published in 1635, seems to have been written because Coke felt it 'A necessary thing for such as be justices of the peace to be known.' The terms 'bail' and 'mainprize' are first defined; then follows a discussion of the persons who, at the common law, may and who may not be admitted to bail or mainprize, how justices fix bail, and the sort of bail to be given. The tract consists of twenty very brief chapters, is logically arranged, and written in a simple style without the plethora of citations so characteristic of Coke's other works.

XXIV

ASIDE from the Institutes, Coke's Reports are his most important writings. The first volume was published in 1600, and the second and third soon after; the fourth, in 1603; the fifth, in 1605; and volumes 6 to 11, both inclusive, between 1607 and 1616. Volumes 12 and 13 were not published until long after Coke's death (1655 and 1658, respectively), and consequently have not the same authority as the earlier volumes. Coke's Reports are so highly esteemed that they are referred to simply as 'The Reports' without the name of the author, and it is worthy of note that during the nineteen years that Coke's Reports were being published, no others appeared, 'as it became all the rest of the lawyers to be silent whilst their oracle was speaking.'

In general, Coke's method of reporting, where the case is of importance, is to give the pleadings in full, then the arguments of counsel, and lastly, the decision of the judges. Often, however, he is more interested in pouring out the common law upon a given point than in the case he is reporting. Cases are reported from all the courts, including King's Bench, Common Pleas, Chancery, Exchequer Courts, and Liveries, and cover the entire field of law, both civil and criminal, with a wealth of citations to the Year Book and other repositories of the common law, and frequently a restatement of it. Coke's prefaces show that he is not unacquainted with the classics; and usually the preface is used for a general essay on some phase of law; thus the preface to the Third Report contains sound advice as to the study of law, the degrees in law and how they are attained, and a brief history of the Inns of Court. The preface to the Fourth Report discusses the political organization of England; the Fifth contains an essay on the ecclesiastical law, and the changes effected in it in various reigns. In the course of this essay, there is necessarily contained much English political history. In the preface to the Sixth Report, Coke discusses the antiquity of the common law, 'not out of my own head,' as he says, but upon the authority of ancient sages. Præmunire and the case of the *post nati* are the subjects of comment in the preface to the Seventh Report. The prefaces to the Eighth, Ninth, and Tenth Reports are essays in the history and literature of the common law that can with great profit be read, even to-day, by the law student. Some of his comments have a curiously modern sound. For example, in the preface to the Eighth Report he says:

And we, that are Judges of the realm, have resolved to cut off all superfluous and unjust delays, and as much as we can, all feigned dilatory and curious pleadings....

Strange, is it not, that the delays and dilatory tactics of 1600 should still be with us? And we are pessimistic enough to believe they will not soon be removed.

The preface to the Eleventh Report is merely a commentary on the cases therein reported, while the Twelfth and Thirteenth Reports contain no prefaces at all.

Many of the cases reported form landmarks in the history of English law. Unfortunately, most of the important constitutional cases appear in the Twelfth and Thirteenth Reports, which, since they were published after Coke's death, have not the same weight and authority as those contained in the earlier volumes. Thus, in the case of customs, subsidies, and impositions, reported in 12 Co. 33, it was held that the King cannot, at his pleasure, put any imposition upon merchandise to be imported or exported except by consent of Parliament. Again, in the case of proclamations, reported in 12 Co. 74, it was held that the King cannot, by his own proclamation, declare an act to be unlawful which theretofore was lawful, and impose a penalty; holding further that the power of the King in the issuance of proclamations was limited to calling attention to the law and the punishment provided for its violation.

It has been said that the American doctrine of the power of the judiciary to declare acts of the legislature unconstitutional has its basis in one of Coke's Reports — Dr. Bonham's Case, reported in 8 Co. 212. That case involved the right of a person to practice medicine in London, without being licensed to do so, and in the discussion of the case, Coke says:

... And it appears in our books, that in many cases the common law will controul acts of Parliament, and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such act to be void. . . .

But certainly the doctrine that an act of Parliament may be adjudged void because it violates the common law does not obtain in England, and it is worthy of note that in Coke's discussion of the power of Parliament in the Fourth Institute, there is no mention of any limitation; but on the contrary, it is stated that its power and jurisdiction 'is so transcendent and absolute as it cannot be confined either for causes or persons within any bounds' (4 Co. Inst. 36). It is very doubtful, therefore, whether the American doctrine can be traced to Coke.

Though here and there throughout the Reports certain 'extravagances' may be pointed out, on the whole they form an exceedingly valuable contribution to our knowledge of the English common law, and probably no criticism or judgment

of his work could be of greater value than that of Bacon, his lifelong antagonist, who said:

Had it not been for Sir Edward Coke's reports, . . . law by this time had been almost like a ship without ballast; for that the cases of modern experience are fled from those that are judged and ruled in former times.

THE END

APPENDIX

THE RULE IN SHELLEY'S CASE

THE facts in Shelley's case have already been briefly stated, but for convenience will be repeated here.

In an action of trespass brought by Nicholas Wolfe against Henry Shelley, the declaration alleged that on November 7, 1578, Shelley broke and entered the close and house of Wolfe, and did certain damage thereto, in the sum of one hundred marks. Shelley pleaded not guilty and demanded trial by jury.

On the trial, the jury found that in the thirty-second year of the reign of Henry VIII (1541), by letter patent, dated on May 24 of that year, the King had granted the lands on which the alleged trespass was committed to Anne Cobham (for what consideration other than the money hereafter mentioned does not appear) for her lifetime, in return for which grant she was to render to the King, his heirs and successors, 3*l.*, 2*s.*, 8*d.* sterling, yearly, at the Court of Augmentation and Revenue on the Feast of Saint Michael the Archangel. On the death of Anne Cobham, the lands were to go to Edward Shelley and Joan, his wife, 'and to the heirs of the bodies of them, the said Edward and Joan between them, lawfully to be begotten.' Anne Cobham took possession of the lands, enjoyed the usufruct thereof until late in the reign of Henry VIII, when she gave up her earthly cares, including the payment of 3*l.*, 2*s.*, 8*d.* sterling, yearly, at the Court of Augmentation and Revenue on the Feast of Saint Michael the Archangel.

Edward Shelley and his wife Joan then took possession of the lands. The record shows that they lawfully begot two sons, Henry, the older, and Richard. Joan died leaving her surviving her husband Edward and their sons, Henry and Richard. Sometime prior to 1554, Edward Shelley had made a lease to Richard Belchamber of the lands which he held. Henry, the older son, married, but shortly prior to the execution of a certain writing which will be mentioned hereafter, Henry died, survived by his wife and his daughter Mary. At

the time of his death, his wife was with child. By this time, Edward Shelley must have been getting along in years; and, contemplating the death of both his wife and his oldest son, began to think about the disposition of his lands. We must bear in mind the English inclination toward primogeniture, the descent of lands to the oldest son, and the traditional desire that lands be kept in the family name. We must also bear in mind that the lands of Edward Shelley under the deed to him were given him under such form of grant that at his death they would go generally to all of the children of the marriage between him and Joan, and that under the law as it then stood, Edward Shelley could not sell or otherwise deed away his land by his own direct and voluntary act.

On September 20, 1554, Edward Shelley's thoughts took concrete shape, and he made an agreement in writing with Richard Cowper and William Martin under the terms of which he agreed to permit Cowper and Martin to have a common recovery. In the agreement it was further provided that he, Edward Shelley, should have the use of the property during his lifetime; that thereafter John Carrel, John Apsely, and Edward Darenolde would have a lease for twenty-four years, and that on the expiration of the lease, the property should go to 'the heirs male of the body of said Edward Shelley lawfully begotten, and of heirs male of the bodies of the said heirs male lawfully begotten.'

Pursuant to the agreement, Cowper and Martin commenced their suit. They obtained judgment, and the matter was returnable on the 9th of October, 1554, for the issuance of a writ to the sheriff directing him to put Cowper and Martin into possession of the property. However, between five and six o'clock in the morning of that day, Edward Shelley died. The writ, nevertheless, was issued as against the survivors of Edward Shelley, and Cowper and Martin were placed in possession, the writ being returned by the sheriff on October 19, certifying that he had put Cowper and Martin in possession, pursuant to the writ.

On December 4 of the same year, Mary, the wife of Henry, gave birth to a male child which was named Henry, after its father. This child grew to manhood, and no rift appeared in the Shelley family until the expiration of the lease of Richard

Belchamber, when Richard Shelley, the second son of Edward Shelley, entered upon the lands and made a lease to Nicholas Wolfe, the lease dating from October 9, 1578, and running for a term of twenty-one years. Then the family quarrel started. Henry, the grandson, claimed the land and entered upon it, as set forth in the declaration of Nicholas Wolfe, whereupon Nicholas Wolfe, the tenant of the second son of Edward Shelley, brought his action of trespass above set forth.

There were four questions raised in the course of the case, but only the principal question, and the one upon which the case was decided, will be here discussed. Richard Shelley was represented by Anderson, the Queen's Serjeant, subsequently Chief Justice of the Court of Common Pleas, and by two other serjeants, one of whom, Gawdy, subsequently to become a justice of the Court of Common Pleas, while Henry was represented by Popham, who was then Solicitor-General, and afterwards became Lord Chief Justice of England, by Cowper and by young Coke, then only twenty-seven years of age, and at the bar only two years.

Before stating the arguments of counsel for the plaintiff and defendants, it seems desirable to review certain phases of common law conveyancing. Real property could be acquired in only two ways: first, by purchase, and second, by descent. The acquisition of real property by purchase included not merely the customary way of bargain and sale for money or other valuable consideration, but by way of gift or devise, where the gift or devise was dependent upon the acceptance thereof by the donee of the property. The acquisition of real property by inheritance, or descent, was by operation of law; i.e., the law cast the estate of the ancestor at his death upon his heirs. The acquisition of land by descent, therefore, did not depend upon the consent of the recipient. The distinction is important for several reasons: In the case of property acquired by purchase, the land was not subject to the debts of the ancestor, nor to the feudal obligations of marriage and wardship fees. In the case of land acquired by inheritance, it was subject to these obligations.

At common law, a conveyance to A gave A simply a life estate, and on his death the property reverted to A's grantor. Then came conveyances to 'A and his heirs'; and this was held

to mean that A acquired an estate in fee simple absolute, which entitled him to absolute dominion and control over it, to use, sell, or give away, if he chose; but in the event that he died still owning it, and having made no other disposition of it, it went to his heirs, the word 'heirs' being held to be words of limitation; i.e., words which described or limited the persons who were to hold after his death. The cases were careful to point out that the 'heirs' in such case took by limitation, by the law casting the estate on them, and not by purchase.

The common law courts early showed a disinclination to approve any method of conveyancing whereby the alienability of land was held up or suspended, and by their decisions frequently defeated the intention of donors of real property which would limit alienability. This resulted in the passage of the statute *De Donis Conditionalibus*, 13 Edw. I, ch. 1 (1285), which provided in substance that the will of the donor of property must be observed, and that the donee of property should have no power of alienation, but the land must descend to the issue of the donee as long as any issue existed, and on the failure of issue, the land would revert to the donor or his heirs. The courts came to call the estate in the donee a fee tail, or estate tail; and the right of the donor to receive back the land after the failure of issue, the reversion. This statute was found not to operate satisfactorily, but it was not until 1473 that its evil effects were removed. In *Taltarum's case* (reported in *Year Book* 12 Edw. IV, Pl. 25, f. 19), the Court held that the owner of an estate tail might dispose of the property by a common recovery. A common recovery originally was an action brought by a person claiming title to land against another who also claimed it. The defendant thereupon set up a defense that he acquired his title from a third party who warranted that he had good title and that such third party should be brought in as a defendant. This would be permitted, and if the plaintiff succeeded in defeating the title of the original defendant, then the defendant who was 'vouched in' would be required to make good to the original defendant any loss he sustained by reason of the breach of warranty. This was ordinarily done by giving to the original defendant other lands of the same value as those he lost, and these lands would, of course, be held upon the same conditions as those

originally given him. After a time the common recovery became a purely fictitious action used largely to defeat the statute De Donis. With this explanation, we can proceed to a statement of the arguments of respective counsel.

Counsel for Richard Shelley argued that by the common recovery suffered by Edward Shelley, the fee tail was extinguished; that since the grant back to Edward Shelley, pursuant to which he received a life estate in the property, contained the further provision that after the expiration of the mesne lease, the land should go 'to the heirs male of Edward Shelley' (that is, the sons) and 'the heirs male of the heirs male' (the grandsons), this latter phraseology required that the words 'to the heirs male of Edward Shelley' be construed as words of purchase, and that the following words 'and the heirs male of the heirs male' be construed as a limitation; and argued for this interpretation on the technical legal ground that a limitation cannot be placed upon a limitation, but upon a purchase only; and that, therefore, it was necessary to construe the indenture in the way mentioned; that such a construction would give effect to all the words contained in the deed and would carry out the apparent intent of the maker of the deed. This would mean that on the death of Edward Shelley, since Richard was the only living male heir, he, Richard, would take the lands by gift from his father, the gift having been made to him by the instrument mentioned, during the lifetime of the father, he being the only heir, the other son Henry having died; and on Richard's death, by the limitation expressed in the deed under which the gift was made, the land would go to Richard's sons. Furthermore, the land having once vested by purchase, it was not subject to being divested on the birth of a male heir of the oldest son, as would be the case if the property came to Richard by descent.

On behalf of Henry Shelley, it was argued that the granting of a life estate to Edward Shelley, and the grant in the *same instrument* of a remainder or reversion to the heirs male, and the heirs male of the heirs male, of the grantee of the life estate named in the instrument, was a mere limitation which showed that the grantee was to have the largest possible estate in the land, and, therefore, he had the entire fee simple title to dispose of as he wished. But since Edward Shelley had not dis-

posed of the property during his lifetime, it passed by the ordinary rules of descent to the son of the deceased oldest son. Hence, in entering the lands in question, Henry entered upon his own property, and of course was not guilty of any trespass. The latter was the view finally adopted by all of the judges of England excepting one judge of the Court of Common Pleas.

This rule was not laid down for the first time in Shelley's case. It had been applied as early as 1325. It probably came to be called the 'Rule in Shelley's Case' because of the great notoriety given it in the application to the particular state of facts, existing in that case. It was objected, and still is, that this rule is arbitrary and operates to defeat the manifest intent of the grantor. But the answer is that while it was arbitrary, so are many other fundamental rules of law. For example, the law of New York State provides that a will shall be executed in a certain way. If it be not executed in the manner specified, by law, even though it be in the handwriting of the maker of the will, expressing without doubt his intention, it is (with immaterial exceptions) of no validity. The policy of the law in the will case is based on the prevention of frauds. The reasons for the rule in Shelley's case are variously given: It is said that any other construction than that whereby the ancestor derived full title would have deprived the lord of his feudal privileges of wardship and marriage, because if the heir took by purchase and not by descent the lands were exempt from these obligations. Again it was argued that if the fee were not in the ancestor, the remainder being contingent until the ancestor's death, the title would be in suspension or abeyance, a condition which the law did not favor.

Looking at the intent in Shelley's case, how can it be said that Edward Shelley's desires were not followed? Here was a man getting along in years, his wife dead, his oldest son dead, leaving a daughter and a wife with child. He also had a second son, Richard. At the time Edward Shelley made his agreement with Cowper and Martin, he could not tell whether the child to be born to Henry's wife would be male or female. Had he wanted Richard to have the land, it would have been a simple matter to have said so. On the other hand, there was the English tradition of land going to the oldest son, and the son of the oldest son, the tradition of keeping the family es-

tate in the family name. Is it not likely that all these thoughts were in the mind of Edward Shelley when he said that the land should go 'to the heirs male and the heirs male of the heirs male'? And hence, wasn't the decision which gave the land to the son of the oldest son probably in accord with Edward Shelley's wishes?

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